(18,619.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 96.

FERDINAND M. JOPLIN, INDIVIDUALLY AND AS ADMINISTRATOR OF THE SUCCESSION OF BENNET JOPLIN, PLAINTIFF IN ERROR,

vs.

THEODORE C. CHACHERE, JOHN P. BOAGNI, AND VICTOR C. SITTIG.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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a UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

F. M. JOPLIN, Plaintiff-in-Error,
versus
T. C. CHACHERE ET AL., Defendants-in-Error. } No. 14216.

Edward L. Wells, and Boatner, Dodds & Boatner for plaintiff-in-error.
W. C. Perrault, for defendant-in-error.
Gilbert L. Dupre, for John P. Boagni, defendant-in-error.
W. J. Sandoz, for warrantor V. C. Sittig, defendant-in-error.

Writ of error to the supreme court of the State of Louisiana from the Supreme Court of the United States of America, returnable at the city of Washington, D. C., within thirty days (30) from the twenty-fourth day of May, A. D. 1902; subsequently extended by Chief Justice Nicholls thirty days from the twenty-first day of June, A. D. 1902.

Transcript of Record.

1 To the honorable judge of the 18th district court of the State of Louisiana for the parish of Acadia:

The petition of Ferdinand M. Joplin, of said State and parish, respectfully represents:

That he is the owner of the tract of land in said State and parish, described as section 49, township seven south, range 1 west, and section 41, township seven south, range 1 east, containing eight hundred and seventy and six hundredths acres of land. That he acquired the same by purchase from James H. Houston, Jr., who purchased from the only surviving heir of Bennet Jopling, deceased. All titles being duly recorded in said parish.

That the United States Government, on July 16, 1900, issued its patent confirming to Bennet Jopling and to his heirs title to said tract of land, which patent is hereto annexed as basis of petitioner's said title. Said land is worth at least six thousand dollars.

That said land was acquired under and by virtue of act of Congress approved March 3rd, 1807, and predicated upon the treaties of the United States of America.

That Theodore C. Chachere and John P. Boagni, both of the parish of St. Landry, and residents of said State and parish, are trespassing upon said land, and claiming to own and be in possession of same by pretended titles originating prior to the issuance of said patent, but not from Bennet Jopling nor from his heir or heirs. That they refuse to give up said land.

Wherefore, petitioner prays that said parties may be duly cited as the law directs, and served herewith, and that petitioner may be recognized as the true and lawful owner of said land by judgment in his favor as against said parties with costs of suit, and placed in possession.

Petitioner prays for general relief.

By his attorney, EDW. L. WELLS.

Filed Sept. 15/1900.
D. B. HAYES, *D'y Clerk.*

2 TUESDAY, *October 2nd*, 1900.

Court met pursuant to adjournment with his honor C. Debaillon presiding judge.

FERDINAND M. JOPLIN
vs.
THEODORE C. CHACHERE ET ALS. } No. 1267.

Exception of want of proper citation filed for both defendants.

District Court, Acadia P'h, La.

FERDINAND M. JOPLIN
vs.
T. C. CHACHERE ET AL. } #1267.

Now into this honorable court comes Theodore C. Chachere defendant and excepts to plaintiff's action because of the want of proper and legal citation.

Wherefore exceptor prays that this exception be maintained and plaintiff's suit be dismissed, and for general relief.

By his att'y, W. C. PERRAULT.

Filed Oct. 2, 1900.
R. T. CLARK, *Clerk.*

Exception of Want of Proper Citation by Defendant Boagni.

District Court, Acadia Parish.

FERDINAND M. JOPLIN
vs.
THEODORE C. CHACHERE. } No. 1267.

Now into this honorable court comes John P. Boagni, sought to be made defendant herein, who before answering plaintiff's petition and specially reserving his rights to do in the event it becomes

necessary, now excepts to plaintiff's action and pleads the want of proper citation.

Wherefore your exceptor prays that this exception be maintained, and plaintiff's suit dismissed at his cost and for
3 general relief.

By his att'y, GILBERT L. DUPRE.

Filed Oct. 2nd. 1900.
R. T. CLARK, *Clerk.*

Application and Order to Take Testimony of Witnesses Out of Court.

District Court, Acadia Parish.

FERDINAND M. JOPLIN
vs.
THEODORE C. CHACHERE ET AL. } No. 1267.

Now into this hon. court comes John P. Boagni and T. C. Chachere, sought to be made defendants herein, who give your hon. court to know and understand that James H. Houston, Jr., as well as T. C. Chachere, are material and competent witnesses in their behalf in the event this suit is permitted to go against them.

That both of said persons are aged and infirm and likely to die before the trial of this suit.

Wherefore they pray that the testimony of the said witnesses be taken (after written notice served on the adverse party) in the manner following, to-wit: The testimony of T. C. Chachere to be taken before the clerk of this hon. court at Crowley, La., on Tuesday the 14th day of Nov. 1900, at 10 o'clock a. m., and that of the said witnesses James H. Houston before Arthur Simon, justice of the peace of St. Landry. That a commission issue to said Simon for said purpose ordering him to take the testimony of said witness at his office in Opelousas, La., on Saturday Nov. 10th. 1900 at 10 o'clock a. m. and that the testimony so taken shall be used as evidence on the trial of this suit if trial is had.

And petitioners conclude by praying for general relief in the premises.

By their attorneys, GILBERT. L. DUPRE,
For John P. Boagni.
W. C. PERRAULT,
4 *For T. C. Chachere.*

STATE OF LOUISIANA,
Parish of St. Landry.

I, John P. Boagni, one of the parties sought to be made defendant herein, do solemnly swear that all of the facts and allegations in said petition contained are true and correct, so help me God.

JOHN P. BOAGNI.

Sworn to and subscribed at Opelousas, La., this 13th day of October 1900 before me,

GILBERT L. DUPRE,
Notary Public.

Order of Court.

The foregoing petition and affidavit being duly considered, it is ordered that the clerk of court notify T. C. Chachere to be at his office in the town of Crowley on Tuesday Nov. 14th 1900, at 10 o'clock a. m. to testify in this case as prayed for herein; and that he issue to Arthur Simon, justice of the peace an order authorizing him to summon before him and to take the testimony of the witness James H. Houston, Sr., resident of St. Landry, as prayed for in this petition, on Saturday Nov. 10th 1900 at 10 o'clock a. m. That due notice be given to the plaintiff in this suit or to his attorney of record, or if both are absent, by posting up this notice in the clerk's office.

Granted in chamber at Crowley La., this 18th day of Oct., 1900.

C. DEBAILLON,
Judge 18th Jud. Dist. of La.

Filed Oct. 18th 1900.
D. B. HAYES, *D'y Clerk.*

5 *Notice to Defendant of the Taking of Testimony Out of Court.*

District Court, Acadia Parish.

FERDINAND M. JOPLIN
vs.
THEODORE C. CHACHERE ET ALS. } No. 1267.

To Ferdinand M. Joplin:

By virtue of an order emanating from the honorable 18th judicial district court, upon application of the defendant in this suit, you are hereby notified that I will take the testimony of the defendant, Theodore C. Chachere, at my office in the town of Crowley, La., on Wednesday, November 14th, 1900 at 10 o'clock a. m.

And you are further notified that the testimony of James H. Houston, Sr., will also be taken in the town of Opelousas on Saturday, November 10th, 1900 at 10 o'clock a. m., before Arthur Simon, justice of the peace,

And this is to notify you to be present at the taking of the testimony of these witnesses, if you see fit to do so.

And herein fail not under penalty of the law.

Witness my hand and official seal at Crowley, La. this 18th day of October, A. D. 1900.

D. B. HAYES, *D'y Clerk.*

Rec'd the within notice with certify copy thereof on the 18th day of October 1900, and on the same day, month and year I served the within notice upon the within named Ferdinand M. Joplin by delivering to him personally a copy thereof in Acadia parish, La.

A. D. LE BLANC, *D'y Sheriff.*

Returned and filed October 19/1900.

D. B. HAYES, *D'y Clerk.*

6 *Minute Entry, Nov. 12th, 1900, Showing Filing of Peremptory Exception.*

MONDAY, *November 12th*, 1900.

Court met pursuant to adjournment with his honor C. Debaillon presiding judge.—

FERDINAND M. JOPLIN
vs.
THEODORE C. CHACHERE ET AL.

Peremptory exception filed and fixed for November 15th, 1900.

Peremptory Exception.

District Court, Acadia Parish.

FERDINAND M. JOPLIN
vs.
T. C. CHACHERE ET AL. } No. 1267.

Now into court comes John P. Boagni and T. C. Chachere sought to be made defendants herein who appear solely for the purpose of excepting to plaintiff's action, — now aver and say: That without waivers of the exception by them filed on the 2nd day of October 1900 alleging want of proper citation, but on the contrary insisting upon the same, they in addition to this exception of want of proper citation now aver and say: That plaintiff cannot prosecute the present action for want of proper parties plaintiff as your appearers stand prepared to show.

Wherefore, reiterating their former exception of want of proper citation, they in addition thereto, file this exception of want of proper parties plaintiff, which exception they pray may be sustained and plaintiff's action dismissed at his costs and for general relief.

By their attorneys, GILBERT L. DUPRE,
Att'y for John P. Boagni.
W. C. PERRAULT,
Att'y for T. C. Chachere.

Filed Nov. 12th, 1900.

7 R. T. CLARK, *Clerk.*

Minute Entry, Nov. 15, 1900, *Showing Trial of Exceptions and Ruling of the Court.*

THURSDAY, *November* 15*th*, 1900.

Court met pursuant to adjournment with his honor C. Debaillon presiding judge.—

F. M. JOPLIN
vs.
THEODORE C. CHACHERE ET AL. } No. 1267.

Exception of want of proper citation taken up argued, submitted and overruled. Exception of want of proper parties taken up, argued, submitted and overruled.

FERDINAND M. JOPLIN
vs.
T. C. CHACHERE ET AL.

Note of Evidence upon Trial of the Exceptions Filed in this Suit.

As to the first exception, I offer the original citation with copies served on the defendant in this suit—marked "A"

As to the second exception, I offer the original act of sale No. 8313 on file in the clerk's office entitled James W. Joplin to James H. Houston, Jr.,—marked "B."

I next offer original act No. 15276 of the clerk's office entitled Jas. H. Houston and Jas. H. Houston, Jr., to Ferdinand M. Joplin. Original offered with leave to substitute copies of these acts offered to prove *rem ipsam.*

I next offer the petition, exception, answer and judgment in suit No. 787 of the files of the late 11th district court entitled Jas. H. Houston, Jr., *vs.* T. C. Chachere *et al.*

Objected to for the reason that this suit is *res inter alios acta*
8 and having no connection whatever and can not affect the plaintiff in this suit. Objection overruled; to which ruling counsel excepts, reserves the point and tenders this in lieu of a bill.

Testimony of James H. Houston, Sr., taken before Arthur Simon, justice of the peace, on the 10th day of Nov. 1900.

We object to the last offer on the ground that there was no return day fixed in the order and no interrogatories annexed to the application; and that law does not permit testimony to be taken in this *ex parte* manner. Objection overruled; to which ruling counsel excepts, reserves the point and tenders this in lieu of a bill.

Testimony of R. T. Clark.

R. T. CLARK, being duly sworn, says:

Q. Examine the citations in this suit and state how they came to be addressed to the 11th judicial district court instead of the 18th judicial district court.

A. After the State was re-districted, this parish then became the 18th; before that it was the 11th. And these citations were some that we had on hand and neglected to make the change from the 11th to the 18th.

This is all the evidence adduced in open court on trial of the exception this 15 day of November A. D. 1900.

R. T. CLARK, *Clerk.*

Filed Nov. 15/1900.

R. T. CLARK, *Clerk.*

Original Citations with Copies Served on Defendants.

THE STATE OF LOUISIANA:

11th Judicial District Court, Parish of Acadia.

FERDINAND M. JOPLIN
vs.
THEODORE C. CHACHERE ET AL. } No. 1267.

9 To the defendant Theodore C. Chachere, of St. Landry p'h, La.:

You are hereby cited to appear before the district court in and for the parish of Acadia, and comply with the demand contained in the petition of Ferdinand M. Joplin against you, a copy of which is hereto annexed; or file your answer thereto in the office of the clerk of said court, in the town of Crowley in 15 days after service hereof.

Witness the Hon. C. Debaillon judge of said court this 17th day of September 1900.

Issued and delivered Sept. 17th 1900.

D. B. HAYES, *D'y Clerk.*

THE STATE OF LOUISIANA:

11th Judicial District Court, Parish of Acadia.

FERDINAND M. JOPLIN
vs.
THEODOSE C. CHACHERE ET AL. } No. 1267.

To the defendant John P. Boagni, of St. Landry p'h, La.:

You are hereby cited to appear before the district court in and for the parish of Acadia, and comply with the demand contained in the petition of Ferdinand M. Joplin, against you, a copy of which is hereunto annexed; or file your answer thereto in the office of the clerk of said court, in the town of Crowley, in 15 days after service hereof.

Witness the Honorable C. Debaillon judge of said court this 17th day of September 1900.

Issued and delivered Sept. 17th, 1900.

D. B. HAYES, *D'y Clerk.*

Filed November 15th, 1901.

R. T. CLARK, *Clerk.*

Copy of Act, James W. Jopling to James H. Houston, Jr.

No. 8313.

UNITED STATES OF AMERICA, }
State of Kentucky, County of Hardin. }

10 Be it known, that on this 18th day of *of* the month of June in the year of our Lord one thousand eight hundred and ninety five before me the undersigned authority clerk of the county court duly commissioned, qualified and sworn in and for the county and State above written and in presence of the witnesses hereinafter named and undersigned, personally came and appeared James W. Jopling of Elizabethtown, Hardin county, State of Kentucky, who declares that for and in consideration of the sum and price hereinafter set forth he does by these presents, grant, bargain, sell, convey, transfer, assign and set over and deliver with full guarantee against all troubles, debts, mortgages, claims, evictions, donations, alienations or other excumbrances whatsoever which any action of his may have brought about and with subrogation to all his rights and actions and with full guarantee of rights unto James H. Houston, Jr., of Opelousas, St. Landry parish, State of Louisiana, here present accepting and purchasing for himself, his heirs and assigns the following described property, to-wit: All his rights, titles, interest and demands in and to a certain tract of land situated in the parish of

Acadia State of Louisiana containing 898.98 eight hundred and ninety eight and ninety eight hundredths acres more or less (Spanish grant) No. 41, township (7) seven south range (1) one east. See parish map and a list of private land claims where above described property is well defined as belonging to Bennet Jopling.

Interlineations between the 10th and 12th lines and erased in the 12th and 13th lines made before signing.

This sale is made and accepted for the price and sum of fifty and 00/100 dollars cash in hand paid, receipt of which is acknowledged and acquittance given, the certificate of mortgage and the receipt of the tax collector required by law to be produced are dispensed with by the contracting parties at their own risk.

Done, passed and signed on the day above written in presence of Bettie Martin and W. O. Jopling.

11 (Signed) JAMES W. JOPLING.
" JAMES H. HOUSTON, JR.

Witnesses:
W. O. JOPLING.
BETTIE J. MARTIN.

Witnesses to second signature:
E. NORTH CULLOM.
W. M. CULLOM.

STATE OF KENTUCKY, }
Hardin County. }

I, John H. Wells, clerk of the county court in and for the county and State aforesaid, do certify that on this day the foregoing instrument of writing was produced to me and duly acknowledged before me by James W. Jopling, a party hereto, to be his act and deed for the purpose therein mentioned.

Given under my hand and seal of office this 18th day of June 1895.

(Signed) JOHN H. WELLS,
[SEAL.] *Cl'k Hardin Co. Ct., Ky.*

STATE OF LOUISIANA, }
Parish of St. Landry. }

I, Wm. J. Sandoz, a notary public in and for the parish of St. Landry, State of Louisiana, hereby certify that the foregoing instrument of writing was produced to me and that the signature of James H. Houston Jr. to said act was duly acknowledged to be his signature in presence of the above witnesses.

Given under my hand and seal this 24th day of June 1895.

(Signed) W. J. SANDOZ,
Notary Public.

STATE OF LOUISIANA, }
Parish of Acadia. }

I, the undersigned authority, do hereby certify that the above and foregoing is a true and correct copy of original No. 8313 of
12 the files of this parish and that said original was filed and duly recorded on July 1st, 1898 in Conveyance " M " at pages 231 & 232.

Witness my hand and seal of office at Crowely, La., this 18th day of November 1900.

R. T. CLARK,
Clerk of Court.

Filed November 15th, 1900.
R. T. CLARK, *Clerk.*

Copy of Act No. 15276, *James H. Houston and James H. Houston, Jr., to F. M. Joplin.*

STATE OF LOUISIANA, }
Parish of St. Landry. }

Know all men by these presents, that I, James H. Houston, a resident of the above parish and State, herein acting as the agent and special attorney in fact of James H. Houston, Jr., a resident of the town of Brookhaven, State of Mississippi, as appears by the annex-power of attorney hereto annexed and made a part hereof, for and in consideration of the sum and price of five hundred dollars cash in hand to me paid, have bargained, sold and delivered unto Ferdinand M. Jopling, of the parish of Acadia Louisiana, all my rights, claims, title and ownership in and to section 41, township 7 south of range 1 east, and section 49 township 7 south of range 1 west, containing eight hundred and ninety-eight acres of land more or less, situated in Acadia parish, La., it being expressly understood that this sale is made without warranty and the purchaser takes the title as it is with a tax title against it, this being the same land acquired by the present vendor from J. W. Jopling, of Elizabethtown, Kentucky by act passed before William J. Sandoz, notary public, on June 15, 1895, and duly recorded.

In testimony whereof, witness my signature at Opelousas, in the parish of St. Landry, State of Louisiana, on this 23rd day of June A. D. 1900.

13 It is expressly stipulated and agreed that the price and consideration above mentioned is to be full and complete satisfaction and consideration for my rights, title or interest that I, James H. Houston individually may have in and to the above described lands by virtue of any deed, contract or other writing in my favor signed by said J. W. Jopling, but that I do not warrant the title.

This last paragraph made before signing.

(Signed) JAMES H. HOUSTON,
For Myself and as Agent of James H. Houston, Jr.

(Stamp .50.)

STATE OF LOUISIANA, }
Parish of Acadia. }

Be it known, that on this 23rd day of the month of June A. D. 1900, personally came and appeared James H. Houston a resident of the above parish and State, to me well known as the party named in the annexed power of attorney and who declared to me notary in the presence of Harry Grey and Mason McBride, the two subscribing witnesses, that he had executed the same in their presence on the day and date therein written, and for the uses, purposes and consideration therein expressed.

Witness my official signature and seal at my office in Opelousas, La., this 23rd day of June A. D. 1900.

(Signed) W. J. SANDOZ,
Notary Public.

Witnesses:
HARRY GREY.
MASON McBRIDE.

STATE OF LOUISIANA, }
Parish of Acadia. }

I, the undersigned authority, do hereby certify that the above and foregoing is a true and correct copy of original number
14 15276 of the files of this court and that said original was filed on October 19th 1900, and same day duly recorded in Conveyance Book " W " at pages 99 *et seq.*

Witness my hand and seal of office at Crowley La., this 15th day of November 1900.

R. T. CLARK,
Clerk of Dist. Court.

Filed November 15th, 1900.
R. T. CLARK, *Clerk.*

Petition, Exception, Answer, and Judgment in Suit No. 787 *of the Files of this Court, Entitled James H. Houston, Jr., vs. T. C. Chachere.*

No. 787.

To the honorable eleventh judicial district court in and for the parish of Acadia, Louisiana:

The petition of James H. Houston, Jr., residing and domiciliated in the parish of St. Landry, Louisiana, respectfully represents:—

That he is the owner of the following described property situated in the parish of Acadia, La., to-wit:

870 96-100 acres of land in section 41, township 7, south of range (1) one east south western land district of La., on both sides of Bayou Mallet in said parish, having 13½ acres front on each side of said

bayou by the ordinary depth of 40 acres on each side, and bounded on the upper side by lands of Joseph Le Jeune, and on the lower side by Joseph Parrott, or lands originally owned by these parties. That said land was confirmed to Bennett Jopling, as per report in American State Papers vol. 2 page 720; that said Jopling died many years ago leaving as his sole legal heir James W. Jopling, who accepted the estate of B. Jopling and who on June 18/1895 sold said property to petitioner, as per sale duly recorded in above parish. Petitioner now avers that Theodose C. Chachere claims 435 acres of said land situated south of said Bayou Mallet, and Victor Sittig claims 435 acres situated south of said bayou, both of said parties residing in the parish of Acadia, La., and who respectively claim and hold said property against petitioner and his right, and in the proportion above given.

Wherefore petitioner prays that said Theodore C. Chachere & Victor Sittig be duly cited to appear in your honorable court to answer this petition, and in due course petitioner prays for judgment in his favor against said Chachere & Sittig, decreeing petitioner to be the owner of the 435 acres of land now held by Chachere, as also owner of the 435 acres of land now held by Sittig, and petitioner prays for costs and for all further necessary orders and decrees in the premises and for general relief.

By his attorney, KENNETH BAILLIO.

Filed March 7/96
J. L. MURREL, *D'y Clerk.*

STATE OF LOUISIANA, }
Parish of Acadia. }

I, the undersigned do hereby certify that the above and foregoing is a true and correct copy of the original now on file in my office.

Witness my hand and seal at Crowley, La. this 15th day of November 1900

R. T. CLARK,
Clerk of Court.

Filed Nov. 15/1900.
R. T. CLARK, *Clerk.*

District Court, Parish of Acadia.

JAMES H. HOUSTON, JR., }
vs. } No. 787.
T. C. CHACHERE ET AL. }

Now comes the defendant through their undersigned attorneys and before answering and reserving all rights to do so when necessary as well as to plead all other exceptions they may have specially plead that plaintiff fails to show any cause or right of action for the

reason that he fails to allege that his author is a forced heir
16 and that his author or vendor has ever been recognized as an heir of Bennet Jopling and placed in possession of the estate of said Bennet Jopling.

Wherefore they pray that this suit be dismissed at plaintiff's costs.

By their attorneys, E. D. ESTILLETTE.
PERRAULT & BAILEY.

Filed Nov. 13/96.
R. T. CLARK, *Clerk.*

STATE OF LOUISIANA, }
Parish of Acadia. }

I the undersigned do hereby certify that the above and foregoing is a true and correct copy of the original now in file in my office.

Witness my hand and seal at Crowley, La.,

R. T. CLARK,
Clerk of Court.

Filed November 15/1900.
R. T. CLARK, *Clerk.*

District Court, Parish of Acadia.

JAMES H. HOUSTON, JR., }
vs. } No. 787.
T. C. CHACHERE ET AL. }

Now comes Theodore C. Chachere made one of the defendants in the above entitled suit and for answer to plaintiff's petition denies all and singular the allegations therein contained except what is hereafter admitted either expressly or by implication.

For further answer he avers that on the 29th day of May 1882 he purchased in good faith and for a valuable consideration from Victor
17 C. Sittig, by authentic act duly recorded in the clerk's office in the parish of St. Landry, the following described property, to-wit:

A certain tract of land situated in the parish of St. Landry (now parish of Acadia) on the Bayou Mallet in Prairie Hayes measuring four hundred and thirty five acres more or less, being a part of the land purchased at tax sale made by D. C. Sittig, tax collector in 1871, said land being in section 41, T. 7, S. R. 1 E.

He further avers that he has had in good faith uninterrupted and peaceable and actual possession of said land ever since the day of his purchase. That since his ownership and possession of said land he has paid the taxes thereon at the rate of twenty six dollars per year, he has enclosed all the land with a fence now fully worth six hundred and forty dollars. He has erected on the said land the following improvements—to-wit:

A residence worth two hundred dollars; a house worth one hundred and fifty dollars; a barn worth two hundred dollars; he has constructed levees and ditches worth two hundred and fifty dollars other improvements and a well worth fully forty dollars.

Further answering he specially pleads in bar of plaintiff's action the prescription of three, five, ten, twenty and thirty years.

In the event for any cause whatever he is not sustained in his defence, in the alternative, should there be a decree divesting him of his property he pleads a inconventional demand and that before he be made to surrender the property, plaintiff reimburse him the amount of the taxes paid by your respondent and pay him the full value of all the improvements placed by your respondent on said land.

Wherefore he prays that plaintiff's demand be rejected at his costs and that your respondent's plea of prescription be sustained that he be quieted in his title and possession of aforesaid tract of land and improvements.

And should there be a decree sustaining plaintiff in his demand your respondent prays in the alternative a reconventional demand against said plaintiff condemning him upon being allowed to
18 enter into the possession of said land, that he reimburse to your respondent the amount of taxes paid by your respondent, to-wit: the sum of three hundred and ninety dollars and that he further pay to your respondent the value of his improvements, to-wit: the sum of twelve hundred and eighty dollars.

And he prays for general relief.

By his attorneys, E. D. ESTILLETTE.
PERRAULT & BAILEY.

Filed Nov. 13/96.
R. T. CLARK, *Clerk.*

STATE OF LOUISIANA, }
Parish of Acadia. }

I, the undersigned do hereby certify that the above and foregoing is a true and correct copy of the original now on file in my office.

Witness my hand and seal at Crowley, La. this 15th day of November 1900.

R. T. CLARK,
Clerk of Court.

Filed Nov. 15/1900.
R. T. CLARK, *Clerk.*

District Court, Parish of Acadia.

JAS. H. HOUSTON, JR., }
vs.
T. C. CHACHERE ET AL. }

Now comes Victor C. Sittig made one of the defendants in the above entitled and numbered suit and for answer to plaintiff's peti-

tion denies all and singular the allegations therein contained except what is hereafter admitted either expressly or by implication.

For further answer that on the 30th day of September 1871 at tax sale made in accordance with law, for a valuable consideration and in good faith he bought the following described property, to-wit:

A certain tract of land lying on both sides of Bayou Mallet measuring eight hundred and seventy 97/100 acres being section
19 41 in T. 7 S. R. 1 east lying there in the parish of St. Landry but now in the parish of Acadia.

That he took possession of said land immediately after purchasing the same and continued in possession thereof in good faith uninterruptedly and peaceably until 29th May 1882 when he sold one half of said land for a valuable consideration to Theodore C. Chachere. That from this last date he has continued in possession of the other half in good faith, uninterruptedly and peaceably up to date. That his title was only reserved in the parish of St. Landry. That the same made to him by the tax collector was only satisfied by the auditor of public accounts of the State of La. and his satisfaction was only recorded in the clerk's office of the parish of St. Landry on 13th June 1874.

Respondent avers that he has erected on the portion of land now in his possession a saw mill of the value of — dollars and has paid taxes on said property to the amount of five hundred dollars.

Respondent specially pleads in bar of plaintiff's demand the prescription of three, four, five, ten, twenty and thirty years.

Wherefore respondent prays to be hence dismissed with his costs and that plaintiff's demand be rejected.

In the event respondent's title for any cause should be set aside and his plea of prescription not sustained, he prays in the alternative a reconventional demand against plaintiff for the amount of taxes respondent has paid as aforesaid and for the value of improvements erected on said land as above set forth, to wit: the sum of — dollars and that plaintiff be condemned to pay him said reconventional demand prior to being put in possession of said land.

And respondent prays for general relief.

By his attorneys, E. D. ESTILLETTE,
PERRAULT & BAILEY.

Filed November 13, '96.
20 R. T. CLARK, *Clerk.*

STATE OF LOUISIANA, }
Parish of Acadia. }

I, the undersigned, do hereby certify that the above, and foregoing is a true and correct copy of the original now on file in my office.

Witness my hand and seal at Crowley, La. this 15th day of November, 1900.

R. T. CLARK,
Clerk of Court.

Filed November 15/1900.
R. T. CLARK, *Clerk.*

11th District Court, Acadia Parish.

JAMES H. HOUSTON
vs.
THEODOSE C. CHACHERE. } No. 787.

In the above cause counsel for plaintiff having so moved, it is ordered that the above suit be and is hereby dismissed at plaintiff's costs.

Done, read and signed in open court this 30th day of November A. D. 1897.

GILBERT L. DUPRE,
Judge 11th Jud. Dist. Court of La.

Filed Nov. 30/97.
R. T. CLARK, *Clerk.*

STATE OF LOUISIANA, }
Parish of Acadia. }

I the undersigned do hereby certify that the above and foregoing is a true and correct copy of the original now on file in my office.

Witness my hand and seal at Crowley, La., this 15th day of November 1900.

R. T. CLARK,
Clerk of Court.

21 Filed November 15th, 1900.
R. T. CLARK, *Clerk.*

Commission to Take Testimony of James H. Houston, Sr.

STATE OF LOUISIANA, }
Parish of Acadia. }

To Arthur Simon, justice of the peace of the first ward of the parish of St. Landry, Louisiana:

By virtue of an order of the honorable, the 18th judicial district court, sitting in and for the parish of Acadia, granted upon the application of the defendants in the suit of Ferdinand M. Joplin *vs.* Theodose C. Chachere, No. 1267 of the files of said court and bearing date this day

You are hereby authorized and empowered to cause the witness James H. Houston, Sr., to appear before you at your office in the town of Opelousas on Saturday, November 10th, 1900, at 10 o'clock to testify before you in the above entitled suit.

The testimony of said witness to be reduced to writing and to be by him signed in your presence, after which it will be returned to this honorable court.

Witness my hand and seal of office at Crowley, La., this 18th day of October A. D. 1900.

D. B. HAYES,
D'y Clerk of Court.

Filed November 5/1900
ARTHUR SIMON,
J. P., 1st Ward, St. Landry, La.

STATE OF LOUISIANA, }
Parish of St. Landry. }

First Justice's Court—Arthur Simon, J. P.

To James H. Houston, Sr.:

The undersigned having received a commission issued by D. B. Hayes, d'y clerk of the 18th judicial district court in and for the parish of Acadia, State of Louisiana, directed to me for the examination of James H. Houston, Sr., a witness in an action pending before said district court, in which Ferdinand Joplin is plaintiff and Theodose C. Chachere defendant, No. 1267 of the files of said court, you the said James H. Houston are hereby required to be and appear before me, at my office in the town of Opelousas, La., in said parish, on the 10th day of November 1900, at 10 o'clock a. m. then and there to be examined and to testify the truth according to your knowledge on behalf of the said defendant; and hereof fail not under penalty of the law.

22

Given under my hand this 7th day of November A. D. 1900.

ARTHUR SIMON,
J. P., 1st Ward, St. Landry, La.

Testimony of James H. Houston, Sr., Taken under Commission on the 10th Day of November, 1900.

STATE OF LOUISANA, }
Parish of St. Landry. }

By virtue of an order of the honorable the 18th judicial district court sitting in and for the parish of Acadia granted upon the application of the defendants in the suit of Ferdinand M. Joplin *vs.* Theodose C. Chachere *et al.*, No. 1267 of the files of said court and bearing date the 18th day of October A. D. 1900, I, Arthur Simon, a justice of the peace in and for the first ward of the parish of St. Landry, by virtue of the annexed order, did cause to appear before me at my office in Opelousas on Saturday, November 10th, 1900 at ten o'clock a. m. the witness JAMES H. HOUSTON to testify in the above numbered and entitled suit.

Having sworn the said witness in the manner provided by law, he was examined by Gilbert L. Dupre, one of the attorneys of the defendant as follows:

Q. What is your name, age, and present occupation?
A. James H. Houston; real estate agent; age 72 years.
Q. Your residence is Opelousas?
A. Yes sir.

Q. What relation are you to James H. Houston, Jr.?
23 A. His father.

Q. From the abstract of title which I have in my hand, I see that as the agent of James H. Houston, Jr., you sold to Ferdinand M. Joplin a tract of land which is the subject matter of this suit. Who is Ferdinand M. Joplin?

A. Well, I don't know further than this, that he is a gentleman living in Crowley now, and he belongs to a family of Joplins in Kentucky. He has been in Crowley, I think, a couple of years, and he is the only member of the family I ever met with. But I don't know anything about him further than his residence there.

Q. Did Ferdinand Joplin make any statement to you at the time he purchased the land, and if so, what was it he said to you?

A. I don't remember that he made any statement.

Q. Did he not state to you that he was one of the heirs of Bennett Joplin, and that he purchased the property in hopes of ultimately meeting the other heirs from whom he would derive title?

A. That's my understanding, yes sir. That is, his father was living. Yes sir, that's the purport of it.

Q. I notice, or rather observe, from my abstract of title that James H. Houston, Jr. had purchased from J. M. Joplin this one's interest in the land on June 8th, 1-95. You recollect that circumstance?

A. Yes sir, I do.

Q. James H. Houston, Jr. had instituted a suit against these defendants, had he not?

A. Yes sir.

Q. Why was it that James H. Houston, Jr., dismissed his suit against these defendants?

A. Well, you see I am the agent for my son Jimmie and he had Mr. Baillio employed. Mr. Baillio didn't give him any encouragement.

Q. What was it Mr. Baillio told him that lead him to dismiss the suit?

A. Well, I don't know what it was.

Q. Did not Mr. Baillio tell your son James H. Houston, Jr. that inasmuch as he represented only one of the heirs of Bennett
24 Joplin, he couldn't maintain the suit?

A. He insisted, and he said it would be preferable to get the other heirs to sign.

Q. Then James H. Houston, Jr., had title from only one of the heirs of Bennett Joplin?

A. Yes sir, that's it. That's the status as far as I can understand the matter.

Q. Then Bennet Joplin had other heirs besides James M. Joplin?
A. Yes sir.

Q. You have no interest whatever in this suit?
A. None whatever.

JAMES H. HOUSTON.

Sworn and subscribed before me this 10th day of November, A. D. 1900.

ARTHUR SIMON,
Justice of the Peace.

Minute Entry, November 16th, 1900, Showing Default.

FRIDAY, *November* 16, 1900.

Court met pursuant to adjournment with his honor C. Debaillon presiding judge.

F. M. JOPLIN
vs.
THEODOSE C. CHACHERE ET AL. } No. 1267.

Default.

Minute Entry, Nov. 21, Showing Filing of Answer and Call in Warranty of John P. Boagni, and also Filing of Answer of T. C. Chachere.

WEDNESDAY, *November* 21, 1900.

Court met pursuant to adjournment with his honor C. Debaillon presiding judge.

FERDINAND M. JOPLIN
vs.
THEODOSE C. CHACHERE ET AL. } No. 1267.

Answer and call in warranty of John P. Boagni filed and
25 call in warranty allowed and answer of T. Chachere also filed.

Answer and Call in Warranty of John P. Boagni.

FERDINAND M. JOPLIN
vs.
THEODOSE C. CHACHERE ET AL. } No. 1267. Acadia Parish.

Now into this hon. court comes the defendant John P. Boagni and without waiver of the exceptions by him filed, but on the contrary with full reservation of same and reiterating and reaffirming same, for answer to plaintiff's demand denies all and singular the allegations therein contained save what is herein specially admitted.

Your respondent admits that by authentic act duly recorded in

this parish he on July 24th 1900 purchased from Victor C. Sittig in good faith and for a valuable consideration "a tract of woodland situated in the parish of Acadia, La., containing five hundred acres more or less, being part of section 41, township seven south range one east confirmed to Bennet Jopling by certificate B No. 1927, bounded north by T. C. Cachere, south by heirs of J. G. Brooks, east by Bayou Mallet and west by E. Veltin and Wm. Johnson Spanish grant acquired by his vendor at tax sale made Sept. 30th 1871, recorded in St. Laundry parish, La., in Conveyance Book B No. 2 page 358 and duly confirmed by the auditor of public accounts 19th May 1874.

For further answer your respondent avers that since the purchase of this land in 1871 as aforesaid his vendor Victor C. Sittig has been in continuous and uninterrupted possessson and in good faith of said tract peaceably enjoying the same.

Respondent pleads in bar of plaintiff's action the prescription of three, four, five, ten, twenty and thirty years.

Further answering, your respondent avers that in the sale made to him before Lucien G. Dupre, notary, on July, 24th, 1900, his vendor the said Victor C. Sittig, warranted the title to the land sold your respondent as aforesaid. That your respondent is
26 therefore entitled to have the said Victor C. Sittig called in warranty to warrant and defend your petitioner's title to the land, and in the event of petitioner's eviction from the land now in suit your petitioner is entitled to a judgment in his favor and against his warrantor for the restitution of the price paid him; for the fruits or revenues of the property he may be obliged to return to plaintiff who evicts him; all costs occasioned by this suit together with such damages as your respondent may suffer by reason of the suit.

Wherefore, the premises considered, your petitioner prays for a delay to have his warrantor cited to defend and warrant your petitioner title to the land sold him; that citation issue to him to this effect; that he be served with cipy hereof; and after the legal delays and due proceedings had your respondent prays in the event of his eviction from the property in dispute for a judgment in his favor and against his warrantor Victor C. Sittig for 1—the restitution of the price paid him; 2—that of the fruits or revenues he might be obliged to return to the person evicting him. 3—all the costs occasioned by the suit in warranty; 4—such damages as your respondent may suffer in consequence of this suit.

He further prays that the plea of prescription herein invoked by him be maintained and he be quieted in his possession as owner of the property in dispute.

And he prays for general relief.

By his attorney, GILBERT L. DUPRE.

Filed November 21/1900.
R. T. CLARK,
Clerk of Court.

Answer of Defendant Chachere.

District Court, Acadia Ph., La.

FERDINAND M. JOPLIN
vs. } Civil Docket, No. 1267.
27 T. C. CACHERE ET AL.

Now comes T. C. Chachere one of the defendants in the above entitled and numbered suit, and for answer to plaintiff's petition denies all and singular the allegations therein contained except what is hereafter admitted either expressly or by implication.

For further answer he avers that on the 29th day of May 1882, he purchased in good faith and for a valuable consideration from Victor C. Sittig, by authentic act duly recorded in the clerk's office of the parish of St. Landry, the property, viz: A certain tract of land situated in the parish of St. Landry—now Acadia—on the Bayou Mallet in Prairie Hayes measuring (435) four hundred and thirty fice acres more or less, being a part of the land purchased at tax sale made by D. C. Sittig, tax collector, in 1871, said land being in sec. 41, T. 7, S. R. 1. E.

Defendant further avers that he has had in good faith uninterrupted, peaceable, and actual possession of said land since the day of his said purchase.

That since his ownership and possession of said land he has paid the taxes thereon at the rate of thirty dollars per year, has enclosed all said tract with a fence worth seven hundred and fifty dollars, and has erected other improvements, viz. one residence worth two hundred dollars, a barn worth two hundred dollars, a house worth one hundred and fifty dollars, another house worth one hundred and fifty dollars, a rice levee and ditches worth two hundred and fifty dollars, two wells worth forty dollars, and has put thereon a pump worth two hundred and fifty dollars.

Further answering defendant specially pleads in bar of plaintiff's right of action the prescription of three, four, five ten twenty and thirty years.

In the event for any cause whatever he is not sustained in his defense, in the alternative should there be a decree divesting him of his property, he pleads a reconventional demand and that
28 before he be made to surrender the property, that plaintiff reimburse him the amount of the taxes paid by him as also the full value of all the improvements placed by him on said land.

Wherefore he prays that plaintiff's demand be rejected at his costs, and that your respondent's plea of prescription be maintained, and that he be quieted in his title and possession of aforesaid tract of land and improvements. And should there be a decree sustaining plaintiff in his demand, he prays in the alternative a reconventional demand against plaintiff condemning him before being allowed to

enter into the possession of said land, that he reimburse him the amount of taxes paid by him as also the value of all the improvements placed by him on said land as hereinbefore detailed aggregating the sum of twenty five hundred and sixty dollars.

And respondent prays for general relief.

By his attorney, W. C. PERRAULT.

Filed November 21/1900.
R. T. CLARK, *Clerk.*

Application, Interrogatories, and Order to Take Testimony under Commission on Part of Plaintiff.

STATE OF LOUISIANA,
18th Judicial District, Parish of Acadia.

F. M. JOPLIN
vs.
T. C. CHACHERE ET AL.

To the honorable judge of said court:

Plaintiff in above styled suit respectfully represents: That he will need the testimony of the following witnesses on the trial of said suit, towit: R. W. English, of Elisabethtown, Ky., Mrs. Bettie Martin of Elisabethtown, Kentucky, F. G. Carley of Elisabethtown, Ky., B. L. Eddy of Elisabethtown, Ky., all — the county of Hardin or the State of Kentucky.

That the testimony of said witnesses is competent, material
29 and important in his behalf, and should be ordered taken by commission before officers to be named by the court in answer to the interrogatories hereto annexed, within such time as the court may affix after service on defendants.

Wherefore he prays that commission issue from your honorable court, directed to any duly qualified notary public within and for the county and State before named, where said witnesses reside, authorizing the taking of the depositions of said witnesses; for service hereon on defendants or their attorneys of record, and for a return day to be fixed for said commissions, and he prays for general relief.

By his attorney, EDW. L. WELLS.

STATE OF LOUISIANA,
Parish of Acadia.

Before me the undersigned authority, for said State and parish, on this day personally came Ferdinand M. Joplin, petitioner in the above petition, and who being duly sworn, says all the facts and allegations therein are true, and the evidence applied for is material.

F. M. JOPLIN.

Sworn to and subscribed at Crowley, La., this January 12th, 1901.

D. B. HAYES,
D'y Clerk of said Court.

Interrogatories to be Propounded to the Witnesses Named in the Foregoing Petition, to be Answered under Oath, in Writing, Pursuant to Commission this Day Applied for and Annexed to said Petition.

First interrogatory. What is your name, age, residence and occupation?

Second. Are you related in any way to the late Bennet Jopling, deceased, in whose favor the United States has lately given a
30 patent confirming an old private land claim for lands in Acadia parish, Louisiana?

Third. Do you know if said Bennet Jopling ever lived in Louisiana and if he did what was his occupation and did he serve in the Army of the United States during any period, stating that period?

Fourth. What relatives, if any, did Bennet Jopling have, and who were they?

Fifth. Did he leave any children surviving him, and if not, who were his nearest surviving relatives, and which one, if any, of them left lawful heirs?

Sixth. Do you know of James Jopling, and what, if any, relation he was to said Bennet Jopling, and if said James Jopling is living or dead?

Seventh. Did James Jopling aforesaid, leave any children surviving, and if so, give their names and sexes, and if any of them died, state it, and if they left lawful issue, give the names and residences of those children?

Eighth. Was James W. Jopling one of those children and is he still living?

Ninth. Do you know whether there was ever any written agreement between the heirs of James Jopling, after his death, regarding the interest of those heirs in Louisiana, and if that writing is now in existence?

Tenth. If you say that writing once existed, but has been lost or destroyed, can you give the contents thereof, touching the disposition of the interest of those heirs in the Louisiana lands?

31 Eleventh. Have you ever talked with any of the children and heirs of said James Jopling, and if so, whom, of anyone, did they recognize as the sole owner of land grants or claims to land in Louisiana

Twelfth. Do you know if there was any consideration for a transfer or relinquishment of title by the heirs of James Jopling in favor of anyone of those heirs, as referred to in previous interrogatories?

Thirteenth. Do you know whether James W. Jopling, in his lifetime, always claimed to own the claim of Bennet Jopling to lands in Louisiana, and if the other heirs of James Jopling knew this fact, and acquiesced in this claim?

Fourteenth. Did any of the Joplings ever leave off any letter from their last name, and if so, what letter was that?

Respectfully submitted,

EDW. L. WELLS, *Att'y.*

Considering the foregoing petition, annexed interrogatories and affidavit, it is ordered that commission issue as prayed for, as follows, to wit: A commission to any notary public for Hardin county, Kentucky authorizing him to take the depositions of the witnesses named in said petition, and that said commission be returned into this court on or before February 28th, 1901.

Let service hereof be made as prayed for.

Granted officially at Crowley, La., on this January 12th, 1901.

R. T. CLARK,
Clerk of said Court.

Filed January 12/1901.
R. T. CLARK, *Clerk.*

32 Service of the foregoing is accepted but all delays reserved this 19th Jan'y A. D. 1901.

GILBERT L. DUPRE,
Att'y — J. P. Boagni.
W. C. PERRAULT,
Att'y for T. C. Chachere and Victor C. Sittig.

Cross-interrogatories to Plaintiff's Witnesses.

18th Jud'l Dist. Court, Acadia Parish.

F. M. JOPLIN
vs.
T. C. CHACHERE ET AL.

With full reservation to object to any and all evidence adduced under the commission issued January 10th, 1901 to take the testimony of Mrs. Bettie Martin, *et als.*, of Hardin county in the State of Kentucky, defendants submit the following cross-interrogatories:

1. If you answer yea to the third direct interrogatory, please state the source of such knowledge, in other words, do you know the facts from your own knowledge or were they derived from others. If from others, when was the same communicated to you?

2. If you answer affirmatively the fourth, fifth and sixth direct interrogatories please give us the source of your knowledge upon these several subject matters. Have you any personal knowledge of any of these facts, or is your knowledge of these facts derived from others? The same applies to the No. 7 and No. 8 of the direct interrogatories.

3. If you state in answer to direct interrogatory No. 9 that you know of the existence of a written agreement with reference to these

La. lands, please give us the source of your knowledge, how acquired and when acquired and from whom acquired?

4. When was it you last saw this writing referred to in direct interrogatories No. 9 and 10?

5. If you say in answer to direct interrogatory 12th, there was such a transfer as is alluded to in the 11th direct int., please be so kind as to give me the source of your knowledge, how acquired, from whom acquired and when acquired?

33 6. If you answer yes to direct interrogatory 13, please state how you know this fact, how acquired, from whom acquired and when acquired?

Respectfully submitted.

GILBERT L. DUPRE,
Att'y for John P. Boagni.

Filed Jan'y 22/1901
R. T. CLARK, *Clerk.*

Minute Entry, May 1st, Showing Filing of Amended Petition.

WEDNESDAY, *May 1st*, 1901.

Court met pursuant to adjournment with his honor C. Debaillon presiding judge.

F. M. JOPLIN
vs.
T. C. CHACHERE ET AL. } No. 1267.

Amended petition filed and allowed.

Amended Petition.

STATE OF LOUISIANA,
18th Jud'l Dist., Parish of Acadia.

F. M. JOPLIN
vs.
T. C. CHACHERE ET AL. } No. 1267.

To the honorable judge of said court:

Into court now comes plaintiff and respectfully shows to the court: That by an error of his undersigned attorney his original petition contains the allegation that James W. Jopling was the sole heir of Bennett Jopling, deceased, the party to whom the United States Government issued the patent embracing the land in controversy, when in truth and fact, said James W. Jopling was only one of ten children of the only surviving heir of said Jopling, to-wit: James Jopling, the sole surviving brother of said Bennet Jopling—said

Bennet Jopling having died without lawful ascendants or descendants.

That the error grew out of the statement by petitioner, plaintiff, that said James W. Jopling had acquired the rights of *of*
34 his brothers and sisters.

Now, plaintiff avers that he has made diligent search for the document that he had been informed existed whereby said James W. Jopling became possessed of the rights of said other heirs, but fears that he may not be able on account of the vast expiration of time since the execution of said document to prove its existence, or its present whereabouts. That he has lately been appointed and confirmed administrator of the succession of said Bennet Jopling deceased, and he desires to amend his aforesaid petition by alleging that said succession is the owner of nine tenths of the property in said suit, and that as such administrator, he reiterates and adopts all the allegations in said petition, except such allegations as are not inconsistent herewith.

Wherefore he prays that he may be permitted to -mend his original petition as herein indicated; for service hereof on the defendants herein, and finally for judgment in favor of petitioner as administrator recognizing the succession of Bennet Jopling as owner of nine tenths and petitioner in his own right as owner of one tenth of said land, and for writs of possession to issue, and that he may be placed in possession of all of said land, for costs and for general relief.

By his attorney, EDW. L. WELLS.

Filed May 1st, 1901.

R. T. CLARK, *Clerk.*

Minute Entry, June 10th, 1901, Showing Filing of Objections to Amended Petition.

MONDAY, *June 10th*, 1901.

Court met pursuant to adjournment with his honor C. Debaillon presiding judge.

F. M. JOPLIN
vs.
T. C. CHACHERE ET AL.

Objection to amended petition filed and fixed for July 1st 1901 at 4 o'clock p. m.

35 *Objections to Amended Petition.*

District Court, Acadia Parish.

F. M. JOPLIN
vs.
T. C. CHACHERE ET AL. } No. 1267.

Now into court comes the defendants and with full reservation of the exceptions and answer by them filed and reiterating and reaffirming the same, who before answering the amended petition filed herein on May 1st, 1901, and specially reserving their right so to do in the event it becomes necessary, now aver and say:—That they oppose the allowance of the amended petition for reason- among others the following, to-wit:

(1.)

It changes the issue first herein presented; it alters the substance of plaintiff's demand by making it different from the one originally brought.

(2.)

Because the facts sought to be injected in the amended petition were known to plaintiff, and should have been alleged in his original petition.

(3.)

That having judicially asserted as a fact "That he was the owner of the property in dispute for having acquired same by purchase from James H. Houston, Jr., who purchased from the *only surviving heir of Bennet Jopling*, dec'd" he is now estopped from disputing this fact; he cannot change his position and assert the contrary, for the reason that one who judicially asserts a fact as the basis of a right touching the matter in controversy, cannot afterwards change his position and assert the contrary.

(4.)

That he stands in his vendor's shoes. That this one having previously judicially asserted in the suit No. 787 of the files of this hon. court (which involved a contest for the same land now in dispute) that he had purchased the land in controversy from
36 James W. Jopling who was the sole legal heir of Bennet Jopling who had died many years ago, and whose estate had been accepted by said heir" cannot now be heard to contradict this solemn judicial allegation made by his vendor in the aforesaid suit No. 787, and reasserted by him (plaintiff) in his original petition filed herein. "One's judicial allegations are the highest evidence against him and cannot be repelled by other evidence."

(5.)

That there was no error in the statement made to his attorney. That the statement so made was in conformity with the facts previously alleged by plaintiff's vendor in the suit No. 787 above referred to, as the record of said suit will establish and show. Certified copies of which are on file in this suit.

Wherefore your respondent prays (for the reasons above assigned that the amended petition be not allowed.

But in the event of its allowance and in that event only, they pray to be permitted to answer thereto and for general relief.

By their attorneys, GILBERT L. DUPRE,
For J. P. Boagni.
W. C. PERRAULT,
For T. C. Chachere.

Filed June 10/1901.
R. T. CLARK, *Clerk.*

Minute Entry, July 1st, 1901, Showing Trial of Amended Petition and Default Against Warrantor.

MONDAY, *July 1st*, 1901.

Court met pursuant to adjournment with his honor C. Debaillon presiding judge.

F. M. JOPLIN
vs.
THEODOSE C. CHACHERE ET AL. } No. 1267.

37 Allowance of amended petition taken up, tried, submitted and taken under advisement. Default in favor of John P. Boagni against his warrantor.

Minute Entry, July 2nd, 1901, Showing Allowance of Amended Petition.

TUESDAY, *July 2nd*, 1901.

Court met pursuant to adjournment with his honor C. Debaillon presiding judge.

F. M. JOPLIN
vs.
T. C. CHACHERE ET AL. } No. 1267.

Amended petition allowed, objections thereto overruled. Default *vs.* all defendants.

Minute Entry, Sept. 16, 1901, *Showing Fixing of Case.*

MONDAY, *September* 16*th*, 1901.

Court met pursuant to law with his honor C. Debaillon presiding judge.

F. M. JOPLIN
vs.
T. C. CHACHERE ET AL. } No. 1267.

Fixed for September 20th, 1901.

Minute Entry, Sept. 17*th*, 1901, *Showing Filing of Answer to Amended Petition.*

TUESDAY, *September* 17*th*, 1901.

Court met pursuant to adjournment with his honor C. Debaillon presiding judge.

F. M. JOPLIN
vs.
T. C. CHACHERE ET AL. } No. 1267.

Answer of defendants to amended petition filed.

Answer to Amended Petition.

District Court, Acadia Parish.

F. M. JOPLIN
vs.
38 T. C. CHACHERE ET ALS. } No. 1267.

Now into this hon. court comes the defendants, and for answer to the amended petition filed herein, aver and say: 1. That they reserve, reiterate and reaffirm all exceptions and defences by them previously set up herein. 2. That they adopt and offer as answer hereto the answer by them filed to the original petition.

Wherefore they pray (with benefit of the reservation herein made) as in their original answer, for dismissal of plaintiff's suit, and for general relief.

By their attorneys, GILBERT L. DUPRE,
For J. P. Boagni.
W. C. PERRAULT,
For T. C. Chachere.

Filed Sept. 17/1901
R. T. CLARK, *Clerk.*

Minute Entry, Sept. 20, 1901, *Showing Filing of Answer of Victor C. Sittig, Warrantor, and Opening and Closing of Case.*

FRIDAY, *September 20th*, 1901.

Court met pursuant to adjournment with his honor C. Debaillon presiding judge.

F. M. JOPLIN
vs.
T. C. CHACHERE ET AL. } No. 1267.

Answer of Victor Sittig called in warranty filed. This case being fixed for today and all parties being present announced their readiness, case taken up, note of evidence opened and closed, argued, submitted and left open until the testimony is transcribed.

Answer of Victor C. Sittig.

District Court, Acadia Parish, La.

F. M. JOPLIN
vs.
T. C. CHACHERE ET AL. } No. 1267.

39 Now into this honorable court comes Victor C. Sittig and for answer to the call in warranty made upon him by John P. Boagni avers and says:

That he denies all and singular the allegations in plaintiff's petition contained, except what is hereafter admitted either expressly or by implication.

For further answer he avers that on the 30th day of September 1871, at a tax sale made in accordance with law for a valuable consideration and in good faith, he bought the following described property, to-wit:

A certain tract of land lying on both sides of Bayou Mallet, measuring eight hundred and seventy and 97/100 acres, being section 41, in township seven south, of range one east, lying then in the parish of St. Landry but now in the parish of Acadia.

That he took possession of said land immediately after purchasing the same and continued in good faith uninterruptedly and peaceably until May 29th, 1882, when he sold one half of said land for a valuable consideration to Theodose C. Chachere. That from this last date he continued in possession of the other half in good faith, uninterruptedly and peaceably up to the time that he sold the same to John Posey Boagni, viz: July 24th, 1900. That his title was duly recorded in the parish of St. Landry; that the sale made to him by the tax collector was duly ratified by the auditor of public

accounts of the State of Louisiana, and his ratification was duly recorded in the clerk's office of the parish of St. Landry on June 13th, 1874.

Respondent avers that he has paid taxes on the property which was in his possession to the amount of six hundred dollars.

He specially pleads in bar of plaintiff's demand the prescription of three, four, five, ten, twenty and thirty years.

Wherefore, respondent prays to be hence dismissed with his costs, and that the plaintiff's demand be rejected.

In the event that respondent's title for any cause should
40 be set aside, and his plea of prescription not sustained, he prays in the alternative a reconventional demand against plaintiff for the amount of taxes respondent has paid as aforesaid, to-wit: the sum of six hundred dollars, and that plaintiff be condemned to pay him said reconventional demand prior to being put in possession of said land.

And respondent prays for general relief.

By his attorney, W. J. SANDSOZ.

Filed Sept. 20th, 1901.
R. T. CLARK, *Clerk*.

Note of Evidence.

18th Jud'l Dist. Court, Acadia Parish, Louisiana.

FERDINAND M. JOPLIN
vs.
THEODORE C. CHACHERE ET AL. } No. 1267.

Evidence for Plaintiff.

Patent from the United States to Bennett Jopling and his heirs, with all certhcates, maps, diagrams, field notes, etc. therein mentioned—marked "A."

Testimony taken before W. C. Montgomery, notary public, of Bettie Joplin Martin, F. G. Corley and L. Elder—marked "B."

Sale of James W. Joplin to James H. Houston, Jr., original offered with leave to substitute certified copy—marked "C."

The foregoing act is objected to by counsel for the defendant for the reason that there is no evidence authenticating the same. Objection sustained and document ruled out. — which ruling counsel for plaintiff excepts, reserved the point and tenders this in lieu of a bill.

Testimony of F. M. Joplin—marked "D,"
" " Ed. L. Wells—marked "E."
" " R. T. Clark—marked "F."

Act of sale from James H. Houston, Jr., to F. M. Joplin, together with recognitive instrument executed in the presence of notary
41 public—marked "G."

Receipt for taking depositions—marked "H."

Evidence for Defendant.

I offer extract from the American State Papers, volume 2, page 720, showing confirmation of title of Bennett Joplin under certificate B, No. 1927, dated March 11/1812—marked "1."

(2.)

Offer tax deed by D. C. Sittig, tax collector St. Landry parish, dated September 30/1871, to Victor C. Sittig, with certificate of registry thereto attached—marked "2."

Objected to by counsel for plaintiff, first: That it is a copy of a copy, that there is nothing to show the absence of the original, there has been no evidence whatever to authenticate the original, and for these reasons we object to the admittance of the document. Objection overruled and bill reserved.

Next offer confirmation of the tax deed by Charles Clinton then auditor of public accounts, dated May 9/74, with certificate of registry thereto attached—marked "3."

Counsel for plaintiff objects on the ground that there is nothing to prove the signature of Charles Clinton, no seal attached. Court overrules objection. To which ruling counsel excepts, reserves the point and tenders this in lieu of a bill.

Next offer certified copy of the act of sale of Victor C. Sittig to T. C. Chachere dated May 29/1882, with certificate of registry thereto attached—marked "4."

Next offer the original act, with leave to substitute copy No. 2778 Victor C. Sittig to Joseph Bloch before H. Terwilliger, notary public, dated December 24/1890, with certificate of registry thereto attached—marked "6."

Testimony of Victor C. Sittig—marked "7."
" " Emar Sittig—marked "8.'
" " T. C. Chachere—marked "9."
" " W. F. Brooks—marked "10."

42 Testimony of S. M. Hundley—marked "11."
Testimony of Martin Carron—marked "12."
" " W. T. McBride—marked "13."

Statement by W. T. McBride, d'y tax collector, showing taxes of T. C. Chachere—marked "14."

Statement by W. T. McBride, d'y tax collector, showing taxes of Victor C. Sittig—marked "15."

Next offer tax receipt of date March 27/93 being taxes of 1892 paid by Victor Sittig—marked "16."

Tax receipt of date September 2/96 showing payment of taxes for the year 1895 by Victor Sittig—marked "17."

Receipts showing payment of taxes by T. C. Chachere, same being dated Feb. 14/85, January 31/89, February 19/91, May 2/91, March 15/93, and July 18/88, all bundled together and marked "18."

Evidence for Plaintiff in Rebuttal.

Sale of James W. Joplin to James H. Houston, Jr., original offered with leave to substitute certified copy—marked "C."

Counsel for defendant objects to the introduction in evidence of the document marked "C" for the reason that the same has not been proved up as required by law, the law requiring that the proof shall be made by the subscribing witnesses thereto, the proof offered being solely in the testimony of Ferdinand M. Joplin, plaintiff herein, not supported by any other witness and he not being a subscribing witness to the act. And further that it is an attempt to create title to real estate by parole and to show title without the required number of witnesses exacted in the established code.

Which objections are overruled by the court and the document referred to the merits of the controversy. To which ruling counsel excepts, reserves the point and tenders this in lieu of a bill.

I next offer the decision by the land office at New Orleans certified to, involving the property in controversy marked "I."

43 The foregoing document is objected to, because it is an attempt on the part of these officers to decide the merits of this controversy; it is the opinion of these parties as to the rights of conflicting claims and is in no manner binding upon the court or the parties for the reason it is an *ex parte* declaration on the part of these officers as to the ruling of the subordinate officer; and further that it is an attempt to contradict the recitals upon which the patent is predicated and a contradiction of the patent itself.

Objection sustained. To which ruling counsel for plaintiff excepts, reserves the point and tenders this in lieu of a bill.

I offer in evidence next, a letter from the Commissioner of the General Land Office to myself on this Bennett Joplin land claim of date February 17 / 1900—marked "J."

Counsel for defendant objects to the introduction of the document for the reason that it is a private communication addressed to the counsel for plaintiff and it is an attempt upon the part of the plaintiff to introduce into this suit *ex parte* evidence without permitting the writer of the letter to be subjected to a cross-examination by the defendant in this suit. That no evidence in relation to the subject matter of this claim can be introduced to contradict the recitals of the tax deed, unless upon proper application made to the court and upon counsel for defendant being afforded an opportunity to either cross-examine the witness in person or by means of the testimony under commission; and further because it is *res inter alios acta.*

(5.)

Objection sustained and document excluded, for the reason that a private correspondence of the General Land Office is *res inter alios*

acta in the controversy now before the court and is not a guide for this court to follow.

Offer letter from Commissioner to E. L. Wells of May 18th, 1900, relative to the Joplin land claim—marked "K."

Same objection, same ruling and same bill reserved.

44 *Testimony of E. L. Wells, Recalled, Marked "L."*

This is all the evidence introduced on trial of the above numbered and entitled cause this — day of September, 1901.

____ ____,
Clerk of the Court.

Commission to Take Testimony of Witnesses for Plaintiff.

THE STATE OF LOUISIANA:

Eighteenth Judicial District Court, Parish of Acadia.

To any duly commissioned and qualified notary public of Hardin county, State of Kentucky, Greeting:

Know ye, that we, reposing confidence in your prudence and fidelity, do by these presents, give unto you authority diligently to examine R. W. English, Mrs. Bettie Martin, F. G. Corley, B. L. Elder, all of Elizabethtown, Hardin county, State of Kentucky witness in a certain suit now pending in our court — which F. M. Joplin is plaintiff and T. C. Chachere *et al.* are defendants, on the part of said plaintiff.

Therefore we desire you at certain times and places, by you to be appointed for that purpose, to cause the said witnesses to come before you, *that* then and there — examine them upon their oaths duly administered according to law; that you reduce said examination to writing, and when you shall have thus taken the same, that you send it closed up under your seal to us, in our said court, at the court house in the town of Crowley, parish of Acadia, on or before the 28th day of February 1901, and have you then and there this commission.

Witness the Honorable C. Debaillon, judge or said court this 29th day of January, 1901.

D. B. HAYES, *D'y Clerk.*

45 Returned and filed Feb 28/1901.

D. B. HAYES, *D'y Clerk.*

Depositions of Bettie Joplin Martin, F. G. Corley, and B. F. Elder, Taken under Commission on Behalf of Plaintiff.

Deposition- of witnesses, produced, sworn, and examined on the days hereinafter mentioned, at the office of W. C. Montgomery, in Elizabethtown, Hardin county, Ky., under and by virtue of the annexed commission, issued out of the honorable the 18th judicial court of the parish of Acadia, State of Louisiana, to take depositions in a certain cause, pending and at issue in said court, between F. M. Joplin, plaintiff, and T. C. Chachere *et al.*, defendants, on the docket of said honorable court.

Mrs. BETTIE JOPLIN MARTIN residing in Elizabethtown, Ky., being duly sworn on the holy Bible on this the 20th day of February 1901, doth depose and say as follows, to-wit:

First interrogatory. Bettie Joplin Martin; live at Elizabethtown, Ky., am 51 years of age.

Second interrogatory. Bennet Jopling was my father's great uncle.

Third Int. Bennet Jopling lived in Louisiana and served in the Army of the United States in the war of the Revolution.

Fourth Int. I know that he had a brother named Jessie Jopling, and my great grandfather Josiah Jopling. There were others that I do not know of.

Fifth Int. Bennet Jopling was not married and left no children, his nearest relatives were his brothers and sisters, of — I have given the names of two in above answer. I do not think that Jessie Jopling was ever married. Josiah Jopling left lawful heirs, among them James Joplin my grandfather.

Sixth Int. James Joplin was a nephew of Bennet Jopling,
46 James Jopling is dead.

Seventh Int. James Jopling left children named Joseph Jopling, Jessie Jopling, William Jopling, Thomas Jopling, Nancy Jopling, Fannie Jopling, Louisa Jopling, Mary Jopling and James W. Jopling. My recollection is that they are all the children of James Jopling, all of whom are now dead. I could not give names and residences of the lawful issue of James Jopling, except in my family, most of the others live in Virginia. Of my father, who are the descendants of James W. Jopling I can give names and residences as follows: T. M. Joplin, Nashville, Tenn.; Benjamin Joplin, Gurley, Alabama; Jessie Joplin, Eureka, Mo.; William Joplin, Carrothersville, Mo.; Josiah Joplin, Santa Anna, Cal.; F. M. Joplin, Crowley, La.; Bettie J. Martin, Elizabethtown, Ky.; O. K. Joplin, Memphis, Tenn. I have some brothers and sisters dead but they left no heirs.

Eighth Int. James W. Joplin was a son of James Jopling, he died May 12th 1900, at my house.

Ninth Int. I do not know.

Tenth Int. Can't give contents.

Eleventh Int. No.

Twelfth Int. I do not know.

Thirteenth Int. Yes, my father claimed the land of Bennet Jopling in Louisiana, but I do not know whether or not the other heirs acquiesced in his claim. Have never heard his claim questioned by any of them.

Fourteenth Int. Our family have dropped the final G from the name and now spell it Joplin.

Cross Interrogatories.

47 First. I know this from the older members of the family, including my father and older brothers. Have known this from the family all my life.

Second. From the older members of the family. Have no personal knowledge.

Third. ——.

Fourth. ——.

Fifth. ——.

Sixth. I know this from conversation with my father James W. Joplin.

BETTIE JOPLIN MARTIN.

F. G. CORLEY, being duly sworn on the Bible on this 26th day of February 1901, doth depose and say as follows, to-wit:

First Int. F. G. Corley, Elizabethtown, Hardin county, Ky., 35 years of age, am county clerk of Hardin county, Ky.

Second Int. No.

Third Int. No.

Fourth Int. Don't know.

Fifth Int. Don't know.

Sixth Int. No.

Seventh Int. I know James W. Joplin who lived at Elizabethtown, Ky., have heard him say that his father's name was James
48 Jopling and that he was related to Bennet Jopling. I know nothing of the other heirs of James Jopling.

Eighth Int. Have you answered this above. James W. Joplin is dead.

Ninth Int. No.

Tenth Int. No, nothing about it.

Eleventh Int. Have talked with James W. Joplin who claimed the land and deeded to F. M. Joplin by deed acknowledged before me.

Twelfth Int. Do not know.

Thirteenth Int. James W. Joplin claimed to own the land, do not know about the other heirs.

Fourteenth Int. The Joplings living here have spelled their name Joplin, leaving off the final G. James W. Joplin told me that the family originally spelled their name Jopling.

Cross Interrogatories.

First. ——.
Second. Have no personal knowledge of these things, other than given in my answers to questions above. I attended the funeral of James W. Joplin.
Third. ——.
Fourth. ——.
Fifth. ——.
Sixth. I talked with James W. Joplin about this the day
49 the deed to F. M. Joplin was acknowledged before me, and got all my information from him, can not give exact date but it was probably three or four years ago.

F. G. CORLEY.

B. L. ELDER, being duly sworn on the holy Bible on this 26th day of February 1901, doth depose and say as follows to wit:

First Int. B. L. Elder, Elizabethtown Ky. 45 years of age; saloon keeper.
Second Int. No.
Third Int. Do not know.
Fourth Int. I knew James W. Jopling who claimed to be related to Bennet Jopling, also knew some one of the children and grandchildren, of James W. Jopling.
Fifth Int. I do not know.
Sixth Int. I do not know.
Seventh Int. I knew James W. Jopling said to be a son of James Jopling. James W. Joplin is now dead. I know the following of his children: F. M. Joplin, Crowley, La.; Mrs. Bettie J. Martin, Elizabethtown Ky.; O. K. Joplin, Memphis, Tenn.; and William Joplin, Carrothersville, Mo.
Eighth Int. James W. Jopling was said to be a son of James Jopling. James W. Jopling is now dead.
Ninth Int. I do not know.
Tenth Int. I do not know anything about the writing.
Eleventh Int. I talked with James W. Joplin who claimed
50 to own the land granted.
Twelfth Int. Do not know.
Thirteenth Int. I know that James W. Joplin claimed the land or land grants Do not know whether or not the other heirs knew or acquiesced in said claim.
Fourteenth Int. The Joplins here spell their name Joplin. I understand the name was formerly Jopling, the final g having been dropped in recent years.

Cross-interrogatories.

Fi-st. ——.

Second. I knew James W. Joplin personally, also know F. M. Joplin, O. K. Joplin, William Joplin and Mrs. Bettie Martin, also know James W. Joplin to have been a son of James Joplin by statements of himself and family to that effect. James W. Joplin is now dead, was here when he died and was buried at this place.

Third. ——.

Fourth Int. ——.

Fifth Int. ——.

Sixth Int. Got my information from James W. Joplin.

B. L. ELDER.

I, W. C. Montgomery, notary public for Hardin county, Ky., do hereby certify that I caused Mrs. Bettie Joplin Martin, F. G. Corley, and B. L. Elder, witnesses hereinbefore named and examined,
51 to appear before me at the times and place above designated, and after publicly and solemnly swearing each separately to tell the truth, the whole truth and nothing but the truth, in answer to the annexed direct and cross interrogatories, I then and there proceeded to examine each witness separately by propounding to them the said direct and cross interrogatories, and reducing in my presence and in presence of the witness his answers thereto and then caused each witness to sign their deposition.

In testimony whereof I have hereunto set my hand and seal on this 26th day of February 1901.

W. C. MONTGOMERY,
Notary Public, Hardin Co., Ky.

My commission expires Jan. 22nd, 1902.

Filed Feb. 28/1901.
D. B. HAYES, *D'y Clerk.*

Testimony of Ferdinand M. Joplin—Marked "D."

F. M. JOPLIN, being duly sworn, says:

Q. Mr. Joplin, were you present when the document marked "C" was executed?

A. Yes sir.

Q. Did you see James W. Joplin sign that act?

A. The foregoing question is objected to upon the ground that it is an attempt to supplement by parole evidence authentic evidence of the passage of the act; that the law indicates the manner in which an authentic act shall be passed, it indicates the manner in which an act passed in a sister State may be authenticated for use in this State; and the court itself having just ruled that the act is not

admissible in evidence, parole evidence is not admissible for the purpose of authenticating the same. To permit witness by parole evidence to construct, or rather reconstruct the document would be to permit him to do indirectly that which the law says should not be done directly. And further, that the authentic act as between the parties makes full proof of itself and the same can not
52 be contradicted. Further because under article 2276 of the Civil Code: "Neither shall parole evidence be admitted against or beyond what is contained in the acts nor what may have been said before or at the time of making them or since." And further that parole evidence is inadmissible to free, contradict, add to, or detract, from any portion of that act as between parties to the act, except upon an allegation of fraud, duress or error. And for the additional reason that title to real estate can not be proved by parole evidence.

Objection overruled; to which ruling counsel for defendant excepts, reserves the point and tenders this in lieu of a bill.

A. I did.
Q. Did you see the other witnesses sign the act?
A. I did.
Q. Is it the genuine signature of James W. Joplin?
A. Yes sir.
Q. Was an officer present when his document was executed?

Above question is objected to on the ground that it is not in keeping with the proof requisite to prove up the instrument as a private act, because it is an attempt to make it appear as an authentic act. Objection sustained and bill reserved by counsel for plaintiff.

Q. Mr. Joplin, where did those witnesses who signed that act reside, where did they reside at the time the act was executed?
A. In Elizabethtown, Kentucky. They are there yet.
Q. What kin are you to James W. Joplin who signed that act?
A. I am his son.
Q. Do you know Bennet Joplin to whom the Government issued this patent?
A. Only by reputation, he died long before I could remember.
Q. Do you know the family history of Bennet Joplin?
A. Yes sir.
Q. Do you know whether he was ever married?
A. He was not, I have always been informed.
53 Q. Do you know how many brothers and sisters he had, if any.
A. He had two brothers—no sisters.

The foregoing question as well as the several questions preceding going to establish heirship, is objected to for the reason that parole evidence is inadmissible for the purpose of establishing such heirship. And for the additional reason that the witness is going to state what he does not know of his own knowledge but that which

he has derived from others. Objection overruled and bill reserved by counsel for defendant.

Q. What *was* the names of Bennett Joplin's two brothers?
A. James Joplin and Josiah Joplin.
Q. Did Josiah Joplin leave any heirs?
A. None at all.
Q. How many heirs did James Joplin leave.
A. There were about ten of them.
A. Can you name those ten?
A. Not from memory I cannot name them all.
Q. Name as many as you can.
A. Josiah, James W. (my father) Thomas Joplin, William Joplin, Mrs. Fannie Hurt, Mrs. Nannie Walker, and there is a Mrs. North but I do not remember her name, who lived in Missouri, and Mrs. Porter, and then Jessie Joplin died before I was born, perhaps.
Q. Did he leave any children?
A. Yes sir, all of those I spoke of left children except Mrs. North and Mrs. Porter.
Q. How old are you?
A. Fifty three.
Q. How do you spell your name?
A. Joplin.
Q. Why don't you spell it like Bennett Joplin?
A. Some of my family spell it with a "g" and some leave the "g" off. I have an uncle, Tom Joplin, who spells it *Jopling*. It was always spelled that way up to the last generation.
Q. Are you acquainted with the witnesses who testified in Elizabethtown, Kentucky?
54 A. Yes, sir.
Q. Do you know whether they were reputable witnesses?
A. Yes sir, the best people we have. F. G. Corley is clerk of court Mr. Elder is a merchant and perhaps about fifty years old, and Mrs. Martin is a sister of mine, she is about forty-eight or nine years old.
Q. Mr. Joplin, do you know where Bennett Joplin resided before the war of 1812?
A. My information was that Bennett Joplin came to Louisiana in the year 1806.
Q. Do you know whether he served in the army of the Revolution?
A. Yes sir, Bennett and Josiah were both in the army.
Q. Where did he move to when he left Louisiana?
A. I could not tell you. I think he died in Louisiana. He at one time resided in Opelousas.
Q. From whom did you get most of the knowledge about your family history?
A. From my father.
Q. How old was your father when he died?
A. Ninety-three.

Q. When did he die?
A. He died last May a year ago.

Cross-examined:

Q. One of the witnesses to the act marked "C" signing herself as Bettie J. Martin is a female and your sister?
A. Yes sir.
Q. You stated that you were present?
A. I did.
Q. Why did you not sign as a witness?
A. I did not know that it made any difference about the witnesses and to some extent was an interested party, in other words my father was selling this land on my advice. I was attending to his business, and the letter of instruction only said to have it signed before two reputable persons without regard to age or ——
55 Q. The title not being in your name and you having no apparent interest in the conveyance, what advice could you have given which could have precluded you from acting as witness?

(5.)

A. I do not know that there would have been any if I had been posted better on Louisiana laws, but I was living in Kentucky and being virtually adviser I would not have been a competent witness in that State.
Q. Was James H. Houston, the alleged purchaser in the act, present at Elizabethtown, Hardin county, Kentucky, at the time of the confection of this sale.
A. No sir, he was not there.
Q. Your father signed the act in Hardin county, Kentucky, and James H. Houston signed it in Louisiana?
A. I suppose so. My father signed in Hardin county, Kentucky. I know nothing except what the papers show.

Cross-examined by counsel of John P. Boagni:

Q. You are now a resident of the town of Crowley and have been residing here how long.
A. Two years last July.
Q. Are you the same F. M. Joplin who, sometime ago, purchased from James H. Houston, that is to say, sought to purchase from James H. Houston, Jr., his rights, title and interest in and to the land involved in this suit?
A. I am.
Q. You purchased, or sought to purchase the property from James H. Houston, Jr., through his agent James H. Houston, Senior?
A. That's right, sir.
Q. Do you recollect making any statement to James H. Houston,

Sr. at the time you purchased that property with relation to the heirs in this suit?

A. I do not.

Q. I will endeavor to excite your recollection by repeating to you what Mr. Houston has testified to. He says among other things that you stated to him at the time you purchased that prop-
56 erty that you were one of the heirs of Bennett Joplin and that you hoped ultimately to be able to purchase the rights of the other heirs. Is that a fact or not?

A. That is not a fact.

Q. Having thus excited your recollection to the conversation alluded to between you and Mr. Houston, can you now state to the court what it was you stated in that conversation?

A. In the first place, Judge, my purchase from Houston was done by letter, I did not talk to him at all. Then I had no conversation with anybody about that kind of a title. I have stated on several occasions that my father had in his possession relinquishments from all of the heirs to him for this property, and I have looked to find it, but there was a fire in his residence where papers were burned and we think the paper was destroyed with them. When I first started in this suit I started with the idea that I could produce it, but for that reason I changed it and brought suit as administrator. I think yet I can find it.

Q. You purchased from James H. Houston, Jr., all his rights, title and interest in and to that property?

A. I did.

Q. And you instituted a suit upon the title obtained by you from Houston?

A. That's right.

Counsel for plaintiff objects to the above on the ground that the record is the best evidence. Objection overruled and bill reserved.

Q. And you declare in that suit that you purchased that property from James H. Houston, Jr., who had purchased the property from the sole surviving heir of Bennet Joplin?

A. Yes sir.

Q. And after you were confronted by the exception to the effect that you were not the assignee of the sole surviving heir of Bennett Joplin, then you come into court and allege that there were other heirs of Bennett Joplin?

Same objection as above, same ruling and same bill reserved.

57 A. My father had told me always that he had this. There were other lands that my father came into possession of exactly in the same manner that he did this. For instance, he collected in the year 76 from the U. S. Government for the land and my father got the entire benefit of it and the other heirs had nothing to do with it. The same authority that gave him that claim in full I thought I could produce in this claim. I know my father got it and I have only found out recently where to locate it.

Q. With knowledge of all these facts before you, you came into this court and declared that you were assignee by purchase of the sole surviving heir of Bennett Joplin?

A. Yes sir and his statement.

Q. And you subsequently changed your position by alleging that you were the heir to only a certain proportion and the balance was vested in other heirs of Joplin?

A. I have a deed from James W. Joplin citing this and he told me he could produce this paper, but since his death we can not find it.

Q. And you deny that you ever told Mr. James H. Houston, Sr., that you were purchasing his rights, title and interest in and to the property in the hopes of ultimately running across the heirs and purchasing their rights?

A. No sir, I did not tell him that. I know that would be almost a hopeless job. I would not undertake to find each particular heir and get the deed to it for the land.

(8.)

Q. Then you have had yourself appointed administrator to this succession for the purpose of furthering your own right and your own interest individually?

A. As well as some of the other heirs. Yes sir, I have consulted with some of the other heirs.

Q. But you know very well that the likelihood of you ever discovering the other heirs is almost impossible, for you have just stated that that is an endeavor you would not undertake.

Counsel for the plaintiff objects to the above, as there is no issue of that kind tendered by the pleadings of the plaintiff or the
58 defendant. Court sustains objection; to which ruling counsel for defendant excepts, reserves the point and tenders this in lieu of a bill.

Q. Mr. Joplin, how long had you been residing in Crowley before instituting this suit?

A. I don't remember just when the suit was instituted. Well, I was in Crowley from July the year before.

Q. And you were aware of the relationship of all the facts heretofore ascertained by you at the time you came to Crowley?

Same objection as above. Same ruling and same bill reserved

Testimony of Ed. L. Wells—Marked "E."

ED. L. WELLS, being duly sworn, says:

I am attorney for plaintiff in this suit and drew up both petitions. It was my mistake that the petition recited that Houston bought from the sole heir, Bennett Joplin, owing to the fact that my client

was not present when I drew the petition and I depended on my memory for the facts in the case. I applied to the deputy clerk of court when I was in Crowley the last time to get the original act of sale from James W. Joplin to James H. Houston, Jr., but was refused permission to take document out, on the ground that the rule of the office prevented any document to be taken out of the clerk's office or recorder's office after they had been once filed here, the object being to have this deed and the deed from James H. Houston, Jr. to F. M. Joplin authenticated.

Cross-examined:

Q. Before the institution of this suit, had you not examined the preceding suit between Jas. H. Houston, Jr., *vs.* T. C. Chachere *et al.?*

A. I had.

Q. And had familiarized yourself with the pleadings therein.

A. No, not very much. I only did it with a view of getting a description of the property and to ascertain whether or not
59 the case had come to the point where the thing adjudged could be pleaded.

Q. You have read the petition in that suit?

A. I had, not very carefully though.

Testimony of R. T. Clark—Marked "F."

R. T. CLARK, being duly sworn, says:

Q. You are clerk of court and have been for how long?

A. Since 87.

Q. What is the rule of your office with regard to deeds that have been filed in the recorder's office for registry, with regard to whether or not they can be withdrawn?

A. We do not permit the original to be withdrawn from the office. Parties can examine them in the office but they can not be withdrawn.

60 *Monthly Return of Certificates Issued by the Commissioners of the Western District of Orleans Territory for March*, 1812.

No.	Date.	Name of person under whom land was claimed.	In whose favor issued.	Nature of claim.	Situation of land.		Number of acres and hundredths.	Arpents and hundredths in front.
					County.	Water course.		
B1927	March 11	Joseph Chevalier Poiret.	Bennet Jopling.	Occupancy ten years.	Opelousas	Bayou of Mallet's woods.	913.98	1089

STATE OF LOUISIANA, }
Parish of Acadia. }

I hereby certify the above and foregoing to be a true and correct extract from page 720, vol. 2 of American State Papers as edited by Walter Lowrie, secretary of the senate.

R. T. CLARK,
Clerk of Court.

61 *Monthly Return of Certificates Issued by the Commissioners of the Western District of Orleans Territory for March, 1812.*

No.	Date.	Name of person under whom land was claimed.	In whose favor issued.	Nature of claim.	Situation of land.		Number of acres and hundredths.	Arpents and hundredths in front.
					County.	Water course.		
B1927	March 11	Joseph Chevalier Poiret.	Bennet Jopling.	Occupancy ten years.	Opelousas	Bayou of Mallet's woods.	912.98	1080

62 *Tax Deed by Tax Collector to Victor C. Sittig.*

STATE OF LOUISIANA, }
Parish of St. Landry. }

Know all men by these presents, that by virtue of the powers in me vested by law, and strictly in accordance with all the legal provisions in such cases made and provided, I, D. C. Sittig, collector of State and parish taxes for the aforesaid parish did seize and advertise for sale at public auction for cash at the court house at Opelousas, on the 30th day of Sept. 1871, the following described property, to satisfy the State and parish taxes due by Bennet Jopling for the year 1871, and the costs of collection, viz: A certain tract of land lying on both sides of the Bayou Mallet measuring eight hundred and seventy 97/100 acres, being section 41 in T. 7 S. R. 1 east. This land was sold in 18 lots each containing forty eight 38/100 acres as per plat furnished by Hezekiah Hayes, surveyor. Having on this day, the 30th day of September, 1871, as previously advertised, offered the aforesaid property for sale in the manner provided by law, and Victor C. Sittig, being the last and highest bidder I adjudicated to him the aforesaid property, for the sum of seventy two dollars, payment of which has been received by me.

Now, therefore, for and on behalf of the State of Louisiana, I, D. C. Sittig, collector as aforesaid, do hereby bargain, sell, assign and set over to the said Victor C. Sittig the aforesaid and above described property, with all guarantees provided in such cases by the law of Louisiana.

In testimony whereof I have hereunto signed, at Opelousas, on the day aforesaid in presence of Louis Demarais, J. H. Chachere.

D. C. SITTIG,
State and Parish Collector for the Parish of St. Landry.

STATE OF LOUISIANA,
Parish of St. Landry.

I hereby certify that the above and foregoing is a true and correct copy as appears recorded in Conveyance Book Y No. 1 page- 605 & 606 of my office on the Sept. 30th 1871.

63 Witness my hand and seal of office at Opelousas, St. Landry, La., this 4th Nov. 1896.

L. T. CASTILLE, *D'y Clerk.*

Filed Sept. 20/1901.
R. T. CLARK, *Clerk.*

Confirmation of Tax Deed by Auditor of Public Accounts on May 9th, 1874.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

OFFICE OF THE STATE AUDITOR.

Whereas, D. C. Sittig, State tax collector of the State of Louisiana, for the parish of St. Landry, by virtue of the power in him vested by law, as tax collector as aforesaid, after having fulfilled and complied with all the previous legal requisites, did seize and sell at public auction the following described property, viz:

A certain tract of land lying on both sides of Bayou Mallet, measuring eight hundred and seventy 97/100 acres, being section 41, in township seven south, range one east. The land was sold in 18 lots each containing forth eight 38.100 acres, as per plat furnished by Hezekiah Hayes, surveyor.

being the property of Bennet Jopling as per assessment roll of the State of Louisiana of the year 1870, to satisfy a debt due said State for the unpaid taxes of the year eighteen hundred and seventy, unto Victor C. Sittig, he being the last and highest bidder on the thirtieth day of September, 1871, in the town of Opelousas, State of Louisiana, for the price and sum of seventy two dollars then and there in hand paid, by said Victor C. Sittig to said tax collector.

And whereas, the said D. C. Sittig, tax collector, did on the thirtieth day of September, 1871, by virtue of the laws of the State of
64 Louisiana, in such cases made and provided, make, execute and sign a deed or act of sale, transferring unto the said Victor C. Sittig, in the name of the State of Louisiana, all the right, title and interest of said Bennet Jopling in and to the aforedescribed property, which act of sale was duly inscribed in the record of conveyances of the said parish in Book No. Y folio 606 on the thirtieth day of September, 1871.

And whereas, due proof has been made to me by the said Jonathan L. Morris present tax collector and John N. Ogden deputy re-

corder of said parish, of the facts aforementioned, and that the said property has not been redeemed by the owner, or any legal authorized agent, within two years from the day of sale aforesaid.

Now, therefore, I, Charles Clinton, auditor of public accounts of the State of Louisiana, under and by virtue of the authority in me vested by law, and by virtue of section 62 of an act of the legislature of the State of Louisiana, approved March 3, 1871, entitled "An act to provide a revenue for the support of the State government of Louisiana, and the manner of collecting the same," being act No. 42 of the Session Acts of 1871, do hereby ratify and confirm with full and complete title in the name of the State of Louisiana unto the said Victor C. Sittig, purchaser aforesaid, his heirs and assigns forever, all and singular the aforedescribed property, and all the right, title and interest which the said Bennet Jopling has or had in it to the same.

In witness whereof I have hereunto signed my name and affixed my seal of office in the presence of M. T. Elfer and Charles G. Victor, competent witnesses at New Orleans, State of Louisiana, this nineteenth day of May one thousand eight hundred and seventy four and the ninety-seventh year of the Independence of the United States of America.

CHAS. CLINTON,
Auditor of Public Accounts of the State of Louisiana.

Witnesses:
M. T. ELFERT.
CHARLES G. VICTOR.

65 OPELOUSAS, LA., *June 13th*, 1874.

I hereby certify that the within was this day duly recorded in Alienation Book B No. 2, page 358.

In testimony whereof I hereto sign my name and affix the seal of my office.

JOHN N. OGDEN,
D'y Recorder.

Filed Sept. 20th, 1901.
R. T. CLARK, *Clerk.*

Copy of Deed, Victor C. Sittig to T. C. Chachere, on May 29, 1882.

STATE OF LOUISIANA, }
Parish of St. Landry. }

Be it known, that this day before me, R. C. Sittig, notary in and for the parish of St. Landry, State of Louisiana, duly commissioned and sworn, and in the presence of the witnesses hereinafter named and undersigned, came and appeared Mr. Victor C. Sittig, of the parish of St. Landry and State aforesaid who declared that for the

consideration mentioned, he does by these presents, grant, bargain, sell, convey, transfer, assign and set over with full guarantee against all troubles, debts, mortgages, claims, evictions, donations, alienations or other encumbrances whatsoever, and with subrogation to all his rights and actions of warranty against all previous owners, and with full guarantee of title unto T. C. Chachere, a resident of the parish of St. Landry, State of Louisiana, present accepting and purchasing for himself, his heirs and assigns a certain tract of land situated in the parish of St. Landry on the Bayou Mallet in Prairie Hayes measuring four hundred and thirty five acres more or less, being a part of the land purchased at tax sale made by D. C. Sittig, tax collector, in 1871—eighteen hundred and seventy one—said land being in section 41, T. 7 S. R. 1 E. This sale is made and accepted for the price and sum of five hundred dollars paid 66 cash money in hand paid.

To have and to hold said tract of land unto the said purchaser, his heirs and assigns there proper use and behoof forever, the said vendor shall and will warrant and forever defend against the lawful claims of all persons whomsoever by these presents. Purchaser freeing the undersigned notary from the production of the certificate of mortgages, required by article 3328 of the Louisiana Civil Code.

Done and passed at the parish of St. Landry this twenty-ninth day of May one thousand eight hundred and eighty two, in presence of Jean Gaillard & Benjamin Goss, competent witnesses, who signed with the appearers and me notary after reading of the whole.

("Original signed") T. C. CHACHERE.
VICTOR C. SITTIG.
R. C. SITTIG, *Notary.*

Witness-:
JEAN GAILLARD.
BENJAMIN GOSS.

STATE OF LOUISIANA, }
Parish of St. Landry. }

I hereby certify that the above and foregoing is a true and correct copy of the original No. 21521 on file and of record in Conveyance Book "M" No. 2, at page 332 of my office, on August 21/82.
Witness my hand and seal of office at Opelousas, St. Landry parish, La., this 4th November, 1896.

L. T. CASTILLE, *D'y Clerk.*

Filed Sept. 20/1901.
R. T. CLARK, *Clerk.*

Copy of Deed No. 2778, *Victor C. Sittig to Joseph Bloch.*

STATE OF LOUISIANA,
Parish of St. Landry.

Be it known that on this twenty-fourth day of the month of December A. D. 1890, before me Oscar H. Terwilliger a notary
67 public duly commissioned, qualified and sworn in and for the State and parish above written and in presence of the witnesses hereinafter named and undersigned, personally came and appeared Victor C. Sittig, a resident of Acadia parish, Louisiana, who declares that he is indebted unto Joseph Bloch, a resident of St. Landry parish, Louisiana, in the sum of five hundred dollars ($500.00) cash and merchandize had and received from the said Joseph Bloch. In settlement and as evidence of which said indebtedness, the said Victor C. Sittig has furnished his certain promissory note in words and form as follows, to wit:

$500.00. OPELOUSAS, LA., *Dec.* 24/1890.

No. —.

Due Dec. 24, 1891.

One year after date for value received I promise to pay to the order of Joseph Bloch five hundred dollars with interest at the rate of eight per cent. per annum from date until paid and ten per cent. additional on amount of principal and interest unpaid if sued upon or placed in the hands of an attorney for collection. Payable at the First National Bank of Opelousas, La.

(Signed) VICTOR C. SITTIG.

Which above recited note after having been paraphed "*Ne varietur*" by me said notary public for identity herewith, was delivered to the said Joseph Bloch who acknowledges the receipt of same.

Now in order to secure the full and punctual payment of the said note in principal and interest at maturity the said Victor C. Sittig declares that he does by these presents specially mortgage and hypothecate in favor of the said Joseph Bloch his heirs and assigns and any and all future holders of said note the following described property, to wit:

First. A certain tract or parcel of land situated in Prairie Faquitaique in section 42 township seven south range 1 east confirmed to Jean Bte David by certificate B No. 1559, said tract contains fifty
68 (50) acres and is bounded north by Michel Carriere, Spanish grant, south by R. C. Sittig, east by T. C. Chachere and west by Virginia Deaville, together with improvements thereon.

Acquired by mortgagor by T. C. Chachere May 29, 1882, as per act of sale recorded in St. Landry parish, La., in Conveyance Book "M" No. 2. pp 334 and 335.

Second. A tract of woodland situated in same vicinity and containing five hundred (500) acres more or less, being a part of section 41 township 7 south range 1 east, confirmed to Bennet Jopling by certificate B No. 1927. Bounded north by T. C. Chachere south by heirs of J. G. Brooks, east by Bayou Mallet and west by E. Veltin and Wm. Johnson. Spanish grant acquired by mortgagor at tax sale on the 30th day of September 1871, which said sale was duly confirmed by the auditor of public accounts on May 19th, 1874, as per act duly recorded in St. Landry parish, La., in Conveyance Book "B" No. 2, p. 358.

And to the presents personally came and appeared the said Joseph Bloch who declares that having taken cognizance of the foregoing act or mortgage he accepts the same for himself, his heirs and assigns.

Contracting parties dispense me, notary, from the production of the certificate of mortgage required by law and tax collector's receipts.

Done and passed at office in Opelousas, La., on the day, month and year aforesaid in presence of Joseph Fromberg and Alfred Dupre competent witnesses who have signed with the appearers and me, notary, after reading the whole.

VICTOR C. SITTIG.
J. BLOCH.

Winesses:

JOS. FROMBERG.
ALF. J. DUPRE.

O. H. TERWILLIGER,
Notary Public.

69 STATE OF LOUISIANA, }
Parish of Acadia. }

I, Raymond T. Clark, clerk of the 18th judicial district court in and for said parish and State, do hereby certify that the above and foreging is a true and correct copy of original No. 2778 which was duly filed and recorded on December 26, 1890, in Mortgage Book No. 2 on pages 267, 268 & 269 and is of record in my office.

Witness my hand and seal of office at Crowley, La., this 20th day of September A. D. 1901.

R. T. CLARK,
Clerk of Court.

Filed Sept. 20 / 1901.

R. T. CLARK, *Clerk.*

Copy of Deed No. 15089, *Victor C. Sittig to John P. Boagni.*

STATE OF LOUISIANA,
Parish of St. Landry.

Be it known that on this twenty-fourth day of the month of July in the year of our Lord one thousand nine hundred before me Lucius G. Dupre a notary public duly commissioned qualified and sworn in for the parish and State above written, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Victor C. Sittig, resident of the parish of Acadia, La., who declares that for and in consideration of the sum and price hereinafter set forth he does by these presents grant, bargain, sell, convey, transfer, assign and set over with full guarantee against all troubles debts, mortgages, claims, evictions, donations, alienations, or other encumbrances whatsoever and with subrogation to all his rights and actions of warranty against all previous owners and with full guarantee of title unto John Posey Boagni, resident of the
70 parish of St. Landry, La., here present purchasing and accepting for himself, his heirs and assigns, and acknowledging delivery and possession thereof, the following described property, to-wit:

A tract of woodland situated in the parish of Acadia, La., containing five hundred acres more or less being a part of section 41, township 7 south range one east confirmed to Bennett Jopling by certificate B No. 1927. Bounded north by T. C. Chachere south by heirs of J. G. Brooks, east by Bayou Mallet and west by E. Veltin and Wm. Johnson, Spanish grant. Anquired by vendor at a tax sale 30th Sept 1871, recorded in St. Landry parish, La., in Conveyance Book "B."

The consideration of this sale is the cancellation and return to vendor of a certain promissory note dated 24th Dec. 1890, payable one year from said date to the order of Joseph Blaoch and by him endorsed in blank for five hundred dollars bearing eight per cent. interest from date executed by vendor and identified with a certain act passed on 24th Dec. 1890, by act before O. H. Terwilliger, notary public of St. Landry, Ph. Said vendor being unable to pay said not- and this sale being accepted for the purpose of cancelling and annulling said note. Vendor acknowledges delivery of said note to him. Vendor expressly grants release of a certain mortgage executed by V. C. Sittig, on Dec. 26, 1890 in favor of Jos. Bloch for five hundred dollars and recorded in Mortgage Book No. 2, page 267 of Acadia parish, in so far as the same bears on and affects the following property, viz: A certain tract or parcel of land situated in Prairie Faquitaique in sec. 42 township 7 south range one east confirmed to Jean Bapte. David by certificate "B" 1559 containing fifty acres, bounded north by Michel Carriere, Spanish grant, south by R. C. Sittig, east by T. C. Chachere and west by Virginia Deaville

and acquired by V. C. Sittig of T. C. Chachere May 29, 1882. Erasures in red ink on second page of written matter from lines 3 to 11 made and approved before signing.

Taxes are paid as vendor exhibits the taxes receipts.

71 Certificate of mor-gage is dispensed with. Erasure of printed matter on this page made before signing, words "same is hereto annexed" erased and approved.

Done and passed at my office in Opelousas, La., on the day month and year aforesaid in the presence of Kenneth Baillio and Chas. W. Perrault, competent witnesses, who have signed with the appearers and me notary after reading the whole.

VICTOR C. SITTIG.
JNO. P. BOAGNI.

Witnesses:
KENNETH BAILLIO.
W. C. PERRAULT.

LUCIUS G. DUPRE,
Notary Public.

STATE OF LOUISIANA, }
Parish of Acadia. }

I, Raymond T. Clark clerk of the 18th judicial district court in and for the said parish and State, do hereby certify that the above and foregoing is a true and correct copy of original act No. 15089 which was filed and duly recorded in this parish on July 26, 1900, in Conveyance Book "V" pages 711 and 712.

Witness my hand and seal of office at Crowley, La., this 20th day of September A. D. 1901.

R. T. CLARK,
Clerk of Court.

Filed Sept 20th, 1901.
R. T. CLARK, *Clerk.*

Testimony of Victor C. Sittig—Marked "7."

VICTOR C. SITTIG being duly sworn, says:

Q. Mr. Sittig, where do you reside?
A. In Faquetique, parish of Acadia.
Q. How old are you?
72 A. I am fifty-eight.
Q. You are acquainted with the tract of land which is the subject matter of this dispute?
A. Yes sir.
Q. How did you first obtain possession of that land?
A. By tax sale.
Q. About the year when?
A. About '71 I guess.

Q. After purchasing that land, Mr. Sittig, at tax sale, as you have stated, what did you do?
A. I had a surveyor to come there and survey the land.
Q. Surveyed by whom?
A. Mr. Hayes.
Q. What was Hayes' occupation?
A. He was a surveyor.
Q. Where did he live?
A. Opelousas.
Q. Did he survey the entire tract or a portion of the tract?
A. The whole tract.
Q. After he had surveyed that tract of land, what was the next step you took.
A. I fenced in a piece this side of the bayou, which I sold Mr. Chachere, and planted some sugar cane.
Q. The tract of land, I understand, is situated on both sides of the Bayou Mallett and you say immediately after having the survey made you fenced in the side which you subsequently sold Mr. Chachere?
A. Yes sir.
Q. What did you do with reference to the woodland on the other side?
A. Cut timber on it. I made a clearing there and planted sugar cane there too.
Q. Well, you say you fenced that land in at the time of this purchase, how long did you remain in possession of that land?
A. Ever since until I sold Mr. Chachere. The other part
73 I sold Mr. Boagni.
Q. Then you remained in possession of the portion you sold Chachere up to the time you sold Chachere?
A. Yes.
Q. And you remained in possession of the Boagni tract up to the day you sold it to Boagni?
A. Yes sir.
Q. After you had sold Mr. Chachere your tract of land, where did you reside?
A. I lived on that same tract of woodland.
Q. Across the bayou?
A. Across the bayou.
Q. The-, after Mr. Chachere had taken his land on one side of the bayou, you moved on the other side on the woodland?
A. Yes sir.
Q. What did you do when you moved there?
A. I had a little field there making sugar cane and water melons.
Q. Did you erect any buildings?
A. Yes sir.
Q. Were you residing there?
A. Yes, I was living there, I had a home.
Q. And besides cultivating the land, did you establish any plant there?

A. Yes sir, I put up a saw mill.
Q. To what use did you apply the saw mill?
A. Cutting lumber.
Q. From where?
A. On that land
Q. Lumber for what purpose?
A. For all kinds of purposes, building houses, bridges and those things.
Q. That was immediately after selling to Mr. Chachere that you went to live on that tract?
A. Yes, then I lived on it.
74 Q. And before selling Mr. Chachere you had the entire land surveyed and had cut timber from the woodland for fuel purposes and other purposes?
A. Yes sir.
Q. Did anybody ever lay claim to that land from the time you purchased in 1871, up to the institution of that suit some years back in '95?
A. That is all, not before.
Q. Before the institution of that suit a few weeks back had you ever been disturbed by anybody in your possession of that property?
A. No sir.
Q. And had lived upon both tracts?
A. Both tracts.
Q. You say before selling Chachere you were living on the tract that you sold him?
A. Yes sir.
Q. And had cultivated that tract?
A. Yes sir.
Q. What had you made there?
A. I made sugar cane and corn.
Q. And on the Boagni tract, what had you made on that tract?
A. I planted sugar cane there.
Q. And established a saw mill?
A. Yes.
Q. Where is the saw mill?
A. It is right there yet on Mr. Boagni's land.
Q. You say that you purchased the Joplin tract in 1871?
A. Yes.
Q. Did you pay the taxes on that entire tract of land from 1871 up to the time you sold to T. C. Chachere?
A. Yes sir.
Q. Have you your tax receipts showing the payment of taxes for the years '71 to '82 inclusive?
75 A. I have not brought them with me.
Q. Are these two receipts dated September 2/96 and March 27/93 the only tax receipts which you can find at this time?
A. That is all.
Q. What became of the tax receipts showing the payment of taxes by you on the property in dispute from the year '71 to '82 inclusive?

A. I had them in a box and when I went to look for them they were all cut by crickets or something. I brought them to Mr. Chachere but he could not see anything.

Q. Was the court house of the parish of St. Landry destroyed by fire during the year '86.

A. Yes.

Q. Is it not a notorious fact that all the records of the tax collector's office of the parish of St. Landry up to and including the year '86 was consumed or destroyed by fire?

Counsel for plaintiff objects to the above on the ground that the tax collector is the only one to testify to that. Objection overruled and bill reserved.

Q. Mr. Sittig, what was the amount of the taxes paid by you on the property in dispute from the year 1871 to 1882 both years inclusive?

Objected to because the witness can not state positively, his memory being incomplete, and forthermore, that notwithstanding the fact that the records in St. Landry parish were burned, there are still copies of the roll for taxes of St. Landry parish deposited with the auditor of the State in Baton Rouge where the list has been shown of the records in St. Landry parish.

Objection overruled and court admits testimony. To which ruling counsel for plaintiff excepts, reserves the point and tenders this in lieu of a bill.

Q. How much taxes did you pay on the land in dispute from '71 to '82?

76 A. Twenty-one dollars and something per year.

Q. You mean twenty-one and a few cents?

A. Yes.

Q. Then the amount of taxes that you paid yearly through that time was twenty-one and some cents per year?

A. Yes sir.

Q. From the time of your sale of a part of the Joplin tract to T. C. Chachere in 1882, did you continue to pay each year the taxes on the balance of the tract up to and including the year that you sold the remainder to Boagni?

A. Yes sir.

Q. You have stated that the receipts of the tax collector under date of Sept. 2/96 and *and* March 27/93 are the only tax receipts which you have in your possession.

A. The only tax receipts I have.

Q. State the amount of taxes paid by you from 1882 up to and including the year 1886, both years inclusive.

Same objection, same ruling and same bill reserved.

A. From $28 to $31 and some cents per year.

Q. Are you positive that you paid as much as $28 or $30 per year taxes?

A. Yes sir.

Q. Who were the chain carriers assisting Surveyor Hezekiah Hayes when he surveyed the entire Joplin tract?

A. Jean Baptiste Le Jeune, Rosamond Le Jeune and myself and I don't remember the other.

Q. Was T. C. Chachere likewise present?

A. Yes, he was present.

Q. State whether the north, south, east and west lines of the entire tract were run by the surveyor on that occasion?

A. Yes.

Q. Were meets and bounds and established, blazes on the trees and things of that sort to indicate the course taken?

A. Yes sir.

77 Q. Was it under these lines found by the surveyor at that time that you took possession and thereafter continuously held that property?

A. Yes sir.

The above objected to by counsel for plaintiff as leading. Objection overruled and bill reserved.

Q. How long after your purchase at tax sale was this survey made.

A. About three or four months.

Q. State whether any person or persons at any time ever entered upon the property or any portion of the property from the time of your purchase at tax sale up to the present time?

A. No sir.

Q. Had you been universally recognized as the owner of that property and in possession of it?

A. Yes sir, I was, nobody ever disturbed me.

Q. Do you know whether T. C. Chachere constructed buildings or made improvements in the way of fences, ditches, canals and levees upon the property that you sold him in 1882?

A. Yes sir, he did make them.

Q. Are those improvements of a costly nature or are they of ordinary cost?

A. They are costly.

Q. How much fence did he put upon that property?

A. He fenced in the whole tract he got from me.

Q. 500 arpents?

A. Yes sir.

Q. What is the fence composed of?

A. Some plank fencing and wire.

Q. What was the character of the post used, good or bad?

A. Good post—white oak.

Q. And the wire?

A. Good.

Q. The planks?

78 A. Good.

Q. What would you estimate to be the value of the fencing

that T. C. Chachere has put upon the property which he purchased from you?

A. It is very hard for me to tell, as there is fully ten thousand feet of fencing and planks and the balance of wire.

Q. Are you able to estimate or approximate with equity the cost that T. C. Chachere had to undergo in order to make that fence upon that property?

A. I don't believe I could. I never made any myself enough for that.

Q. Are you acquainted with the levees he made upon that property for rice purposes?

A. Yes.

Q. Describe what kind of levees.

A. They are about one and a half or two feet high, about four feet wide and some more or less closer than the others.

Q. State what in your opinion it is worth to construct similar levees as are constructed on the tract of land which Chachere bought from you?

A. I do not understand exactly what you mean.

Q. How much would you charge to construct levees of the kind made by T. C. Chachere on the property bought by him from you?

A. The levees he has got on that place he could not construct under $200.00.

Q. You estimate the worth of the levees made by Chachere on the tract bought by him from you at $200.00?

A. Not less.

Q. Has he constructed any wells or pumps on that place?

A. Yes, sir, he has got a well—not a drinking well. A dam and a pump and a portion of his land dammed up which he keeps water on.

Q. What is the cost of constructing that dam and putting in the pump on that place?

A. It made a big piece of work, I can not tell you how much.

79 Q. State to the court what, in your opinion, is the cost of that particular work?

A. He could not make that dam under $250.

Q. Including the dam?

A. Yes, that dam is about twelve feet high.

Q. Then I underst-nd you to say that the cost of making that dam and putting in that pump is at least $250.00?

A. I don't know the worth of the pump, I know the worth of the work. I never bought any pumps. I was talking about the dam itself.

Q. Has he constructed a residence on that property?

A. Yes sir, which he has yet.

Q. What kind of a building is it, large or small?

A. It is a pretty large building.

Q. I am *about* speaking about the residence—the dwelling house?

A. It is a pretty good house.

Q. What material is used in its construction?
A. Sawed lumber.
Q. First class lumber?
A. Yes sir.
Q. How about the workmanship, is it good or bad?
A. Good.
Q. Is it a well finished, rather costly house? How large is that house?
A. About 26 x 28 or 30.
Q. With galleries?
A. Yes sir, galleries.
Q. One or two story?
A. One story.
Q. Shingle roof?
A. Shingle roof.
Q. What, in your opinion, is the cost of constructing that house?
A. About $175 or $180.
Q. What would be the cost of the workmen in addition to
80 that for building it?
A. From $45 to $50.
Q. Is there a barn on the place?
A. Yes, a big barn that cost him $150.
Q. Do you know that?
A. Yes, I got some of the money myself.
Q. How large is that barn?
A. About 40 x 30 maybe 60.
Q. Made of sawed lumber with shingle roof?
A. Made of solid light wood post, round trees picked out.
Q. There is another house on that tract of land, is there not?
A. Yes sir, there are two more.
Q. How large is it?
A. It is about 32 x 20.
Q. What is the character of the material used in its construction?
A. Good material.
Q. Shingle roof?
A. Oak shingles.
Q. What kind of material is otherwise used in its construction?
A. All sawed lumber.
Q. What is the value of that house and the cost of its construction?
A. I can not tell you. The cost of making it is $30.
Q. What is the value of material used in its construction according to your idea and knowledge as to the value of lumber?
A. About $70.
Q. Is there any other building on the place?
A. Yes.
Q. What kind?
A. Dwelling.
Q. What kind of material is used in its construction?
A. All sawed timber.

Q. Shingle roof?
A. I cannot tell you, I did not make it. I only know about
81 the lumber.
Q. About what is the value of the material used in its construction except the value of the roof material?
A. I believe the lumber on that house cost him about $80, it is a good house.
Q. What would be the cost of the labor in constructing that house?
A. About the same thing as the other one, from $30 to $35.
Q. Mr. Sittig, state whether or not these improvements which you have detailed have enhanced the value of that property?
A. It has.
Q. Has it added to the property itself a value?

Counsel for plaintiff objects to the above on the ground that the question is leading. Objection overruled and bill reserved.

A. Of course it has.
Q. To what extent? To an amount equal to that which you have detailed?
A. Yes and more.

Cross-examined:

Q. Mr. Sittig, what relation are you to Tax Collector Sittig?
A. He is my father.
Q. Where did you live when this tax sale was said to have taken place?
A. At Faquetique with Mr. T. C. Chachere in his house.
Q. How far from the land in this suit?
A. About a mile.
Q. Did you ever see or hear of Bennett Joplin?
A. No sir.
Q. You say this dam cost at least $250. Did you ever have a dam built?
A. No, but I have worked for others and built dams.
Q. Did you estimate the cost of this dam with the levee?
A. Yes, sir.
82 Q. How do you know that it would cost $250?
A. Because I made that kind of work.
Q. How many dams did you ever make?
A. I never kept account—I made several.
Q. Did you make this dam?
A. No sir, I did not.
Q. Do you know how long it took to make it?
A. No sir, I know how long it should have taken from the work that was done.
Q. Do you know when that dam was made?
A. No, I can not tell you.
Q. Do you know when the levees were made?
A. No, the levees were made when the dam was made.

Q. Do you know when the fence was made?

A. It was made directly after he got the land from me, I know that.

Q. Is the same fence there now as when he made it when he got it from you?

A. He has renewed some of the post and wire.

Q. Mr. Chachere has been raising rice on that land?

A. Yes sir.

Q. How many acres did he have in cultivation of rice?

A. I can not tell you that.

Q. I want about?

A. It is hard for me to tell. He had some corn and some rice, fully half of it rice.

Q. At least 250 or 60 acres in rice?

A. No, there is some woodland on that land. It is fenced in. There is about 100 acres of woodland I believe.

Q. How much of it was in rice?

A. I can not tell you exactly I never measured it. Maybe from 150 or 40 something like that.

Q. You are right sure there ain't as much as 200 acres in rice?

A. No sir.

83 Q. How much of that land has he cultivated in corn, grain and rice?

A. I can not tell you. The prairie land is all in cultivation but I can not tell you how it is divided between corn and rice.

Q. There is as much as 100 acres in woodland and the whole tract contains 500 acres?

A. Yes, he has a pasture for stock, you know.

Q. How many acres did he raise corn on?

A. I can not tell you exactly. I didn't measure the land, as I said.

Q. Could you tell about how many acres he has got in corn?

A. If I had measured it I could tell you, but now I guess it is between 40 and 50 acres.

Q. How long has he been raising corn on that land?

A. Ever since he got it from me.

Q. Put the same land in corn every year?

A. I don't know.

Q. How long has he raised rice on that land?

A. Been raising rice nearly all the time since he has had it.

Q. Well, did he raise good crops of rice on that land?

A. Sometimes he did. He had a good crop this year and last year I know. I don't very often see the crop.

Q. Do you know how many barrels he raised last year?

A. He must have made nearly 600 sacks last year.

Q. And how much this year?

A. I can not tell you, he has not threshed yet.

Q. Has he a good crop on?

A. Pretty good.

Q. Will he make as much this year as last year?

A. I don't know.
Q. How much did he make the year before that?
A. I don't know. I only know the crop of last year.
Q. What was rice worth a barrel last year?
84 A. $3.25 I believe.
Q. It sold for an average of three dollars a barrel?
A. Yes.

Counsel for defendant now objects, there being no demand or claim for rent set up by plaintiff in his petition, and any evidence going to show the amount of crops made upon the place is inadmissible for the reason that the plaintiff is not entitled to receive compensation for the same, not having alleged or prayed for same in his petition.

Court will overrule objection and allow the testimony for the reason that in this case there is a claim made for levees and dams which are entirely unnecessary except for the cultivation of a farm from which a revenue could be derived. To which ruling of the court defendant excepts, reserves the point and tenders this in lieu of a bill.

Q. Is that pump that you speak about attached to the soil of the ground?
A. Of course it is attached.
Q. Can it be taken out?
A. Yes sir.

Testimony of Emar Sittig—Marked "—."

EMAR SITTIG, being duly sworn, says:

Q. You are the son of V. C. Sittig?
A. Yes.
Q. How old are you?
A. 27 years old the 18th of August.
Q. Are you acquainted with the property known as the Joplin tract which is in contest in this suit?
A. I think I know it.
Q. How long have you known it?
A. Since the age of nine I have been working on it with my father.
85 Q. I understand you to say that since you were nine years of age you have been working on that place?
A. Yes sir.
Q. Who has been in possession of that property since you have known it?
A. My father has been in possession.
Q. Who else?
A. I know of nobody else.
Q. Is T. C. Chachere in possession of a part of the property?
A. Yes, to my knowledge.

Q. Then I understand you to mean that T. C. Chachere is in possession of that part on one side of the bayou?

A. Yes, on this side of the bayou.

Q. And Victor Sittig, your father, was in possession of the land on the other side of the bayou?

A. Yes.

Q. Was your father or T. C. Chachere at any time ever troubled in their possession of that property by anyone?

A. Not that I know of.

Q. Have you all not worked that property year after year without any objection or without any disturbance by any one?

A. Yes, every year without being molested.

Q. State whether or not your father had constructed a dwelling or dwellings on the land in dispute on both sides of the bayou?

A. On one side, yes, where he is yet.

Q. Before he resides where he now resides, did he not reside on that part of the tract on this side of the bayou?

A. Not that I know of.

Q. State whether or not all that portion of the tract on this side of the bayou is enclosed by fences?

A. I think it is all under fence, I don't know how large the tract is.

Q. Do you refer to that portion of the property in the possession of T. C. Chachere?

86 A. Yes, that is it.

Q. State whether or not there are buildings and improvements, rice levees, dams and other improvements on the property in the possession of T. C. Chachere?

A. There are houses, levees and dam also.

Q. Who made those improvements?

A. That is beyond my knowledge, I do not know.

Q. State how many buildings there are on the property in the possession of T. C. Chachere?

A. Three houses that I know and one barn.

Q. How many arpents of fencing are there on the property of T. C. Chachere?

A. I do not know.

Q. Is it a large amount or small amount?

A. Large amount.

Q. Very large?

A. Yes.

Q. Are those buildings and improvements, fences, etc., on the property of T. C. Chachere of a costly nature?

A. Certainly.

Q. Are the levees and dam on the place of a costly nature?

A. Yes.

Q. Are you any judge of the value of such buildings and improvements?

A. No.

Examined by counsel for John P. Boagni:

Q. You know the tract of land which is almost wholly woodland and which your father sold to John P. Boagni?
A. I have worked on it long enough.
Q. Did your father ever occupy that land?
A. On one part of the land out on the prairie. I do not know where the lines run.
Q. Did your father put any improvements on that land?
A. He put a saw mill.
87 Q. Did he run that mill?
A. Yes we run that mill.
Q. Sawed lumber?
A. Yes.
Q. Where did he get the lumber from?
A. Off of that same land.
Q. Did he use that land for any other purpose besides sawing lumber?
A. We split posts on it, also he cultivated some.
Q. Did he cut wood there for fuel?
A. There is where he took his wood.
Q. Up to the time he sold Boagni that land, he was running the saw mill and cutting timber therefrom?
A. Yes.

Testimony of T. C. Chachere—Marked "9."

T. C. CHACHERE, being duly sworn, says:

Q. Mr. Chachere, how old are you?
A. Sixty-nine.
Q. Where do you reside?
A. In Eunice, St. Landry parish.
Q. Previous to going to Eunice, where did you formerly reside?
A. At Prudhomme.
Q. Are you acquainted with the land which is the subject matter of the present suit?
A. Yes sir.
Q. From whom did you acquire the land?
A. From Victor Sittig?
Q. About what year?
A. In '82.
Q. Since you purchased that land what have you been doing with it?
A. Improving it and cultivating it.
Q. Up to now?
A. Yes sir.
88 Q. What improvements, if any, have you made on that land?
A. I could not tell you exactly that because I keep improving all

the time. The first house I constructed on the property cost me $700.

Q. How many acres of that land have you got under fence?

A. I have got the prairie left of the woods about 350 or 60 acres. I never measured when I put the fence on the line.

Q. Do you remember the time that Victor Sittig bought the property?

A. Yes sir.

Q. Do you recollect when he went on that property?

A. Yes sir.

Q. How long was that after his purchase at the tax sale?

A. It was maybe two or three months, but he began working it right away.

Q. Mr. Chachere, he went on that property a few months after the tax sale, and he remained in possession of the property up to the time he sold to you?

A. Yes.

Q. And you have been in possession of the piece he sold to you cultivating it since he purchased it?

A. Yes sir.

Q. That tract, I understand, is divided by the Bayou Mallett?

A. Yes sir.

Q. The piece he sold Mr. Boagni is principally woodland?

A. Yes sir.

Q. Mr. Chachere, after he sold to you, did he establish any improvements upon the woodland?

A. Yes sir, he had some improvements right on the bayou, clearing a piece of land to reside on it and a saw mill. He worked there and split boards and post and worked on it all the time and still works on it until he sold Mr. Boagni.

Q. That land of Boagni's, you say, with the exception of
89 that saw mill, is woodland?

A. Yes sir and the saw mill is there.

Q. And the timber he sawed there he procured from the land?

A. Yes sir. After he sold Boagni he got some from Duson.

Q. From the time he purchased that tract up to the time of the institution of that suit a few years back, were you all ever troubled by anybody?

Q. No sir, never.

Q. Victor Sittig had been in possession of that tract purchased at the tax sale without disturbance of any kind until the institution of the Houston suit?

A. Yes sir, without any disturbance.

Q. How long after the date of the tax sale to Victor Sittig was it before the property was surveyed?

A. A couple of months. I went with him because he was living at home when he got the property he was working with me all the time and the land was close to the house not more than half a mile from the corner of the land that I owned.

Q. Who was the surveyor?
A. I can not say.
Q. Were you present on that occasion?
A. Yes sir.
Q. Please state whether Victor Sittig from the time of his purchase at tax sale up to the time that he sold to you remained in possession of that property under the lines established by that surveyor?
A. Yes sir.
Q. From the time that he sold to you up to the time that he sold to Boagni, did he remain in possession of the balance of the tract under those lines established by that surveyor?
A. Yes sir.
Q. Mr. Chachere, who paid taxes for Victor Sittig from the time of his purchase at tax sale up to the time he sold to you?
A. Myself. I suppose I paid two or three or four years.
90 Q. Did you place any improvements upon the property which you purchased from Victor Sittig?
A. Yes sir.
Q. Detail all the improvements which you have placed upon that property?
A. All told, I suppose about eight or ten houses, sheds, etc., barns residences for hirelings I had there.
Q. What improvements are there on that tract of land to-day that were constructed by you and by others for you?
A. I have four buildings now, three dwelling houses and a big barn.
Q. What other improvements have you on that property?
A. I have good fencing, levees and dam.
Q. What became of the big two-story residence you had some years go on that property?
A. It burned.
Q. Detail now the kind of buildings that are on that property and the value of each?
A. They are all built out of first quality pine lumber, covered with cypress and some covered with oak and some with pine, all of them made by good workmen that I paid from $1.50 to $2.50 a day.
Q. In what condition are they to day?
A. In pretty good condition. I have got one nearly new, it was built year before last.
Q. How much fencing have you on that property?
A. Well, I have about 350 or 380 fencing.
Q. What does the fencing consist of?
A. I have some plank and some wire. Post 8 ft. apart all oak post and the wire cost me $4.75 a roll.
Q. And the planks?
A. The planks delivered are worth from ten to eleven dollars a thousand.
Q. What is the condition of the fence to-day?

A. It is pretty good. I had it repaired this year. It is all
91 good fencing. As good fencing as any in the neighborhood.

Q. State what is the value of the fence surrounding the property now in your possession, being part of that property in dispute?

A. It cost over $350 to fence it in sure. At one time it would have cost more when wire went up.

Q. How large is the largest building on your property?

A. I have got one that ought to be 30 x 24, twelve foot story.

Q. What is the value of that particular house?

A. It is worth $250.

Q. Did it cost you that?

A. It cost me that much money. I had that first house burn and when I built again that is what it cost for the lumber and everything but I was not there to see it done and it cost me more than if I had been there.

Q. What kind of a barn is that you have on the place?

A. A fine large barn.

Q. What are the dimensions of the barn?

A. Fifty odd feet by thirty I believe, covered all in cypress.

Q. What did it cost to construct that barn?

A. It cost $150 for the cover and workmanship. I furnished all the other lumber. The reason I can not say exactly is because it was done by hands on the place who would work a day or two and then go to work in the field. I had them by the month and could not keep account of it.

Q. Can you state with positiveness that your barn cost you not less than $200.00?

Counsel for plaintiff objects to the above question as being leading. Objection sustained and bill reserved.

Q. What did it cost you?

A. It cost me over $250.00.

Q. Now describe the dimensions of the next best building which you constructed on that property?

A. It is a three room house which must be 22 x 22 or 24 with an upstairs.

92 Q. What is the character of the material used in the construction?

A. All good sawed lumber.

Q. What did that building cost you?

A. There was about $80 worth of lumber and $35 worth of workmanship not counting nails and blocks; something like between $150 and $160.

Q. Now, give the dimensions of the last remaining house that you constructed on that place and its value?

A. Well, I could not give you the dimensions because I have never seen it since I have been paralyzed. I know I paid $160 but I can not tell you what it is because I have never seen it, never went back on the place. I have had hands working and I sent the boys

but I never went back. There are three years I have not seen any of my places.

Q. Is that the building that was constructed last year?

A. Yes sir, it has been a year and a half.

Q. Please state whether you have made improvements in the way of levees and ditches on that property?

A. Well, I have good levees on every bit that I plant rice on.

Q. State at what cost did you construct these levees?

A. I could not say as I have had some made this year and some last year and some year before last which I do not know, I didn't keep account of it and everything like that on the place. But it cost from $150 to $175 for levees, ditches, etc. It is about five years that I have been putting levees on it.

Q. This estimate made by you in regard to the value of constructing levees and ditches, does it include the cost of making the dam?

A. O, no.

Q. What was the cost of making and constructing the dam by which you hold water for irrigating purposes?

93 A. First I gave $200 for the levee about fifteen feet high and about 60 or 70 feet wide. That is three years ago. And then I gave last year—but I don't keep account because it was when Tom Brooks was there on the place and he had it made and he was owing me and I didn't get anything. I paid him and I didn't get any account. Last year I paid $25 to fix up the levees so as to make it higher and longer and this year I had it made by the Ludeau family and the ReJeans and I have never settled with them yet.

Q. What was the probable cost?

A. Maybe $25, we have not settled yet.

Q. Besides these improvements, did you put wells and a pump?

A. Yes sir, put a pump and a well.

Q. What was the cost to you of these wells and that pump?

A. The wells cost from 12 to 15 dollars a piece and the pump cost me $225.00.

Q Mr. Chachere, please state whether these buildings, fences, ditches, dams, wells, etc., have enhanced or made more valuable that property?

A. I suppose it has made it about two or three times the worth of it. When I got it it was not worth two bits an acre and the owners would not own it, it sold for taxes.

Q. Can you state with positiveness that the land has been enhanced in value to the extent equal to the cost of these improvements that you have detailed?

A. I could not exactly say that. It may be more because there is the unimproved land that is not cultivated, and I always find renters but the other is standing there and nobody cultivates it and has nothing to do with it.

Q. Then you know that the property has been enhanced in value to an extent at least equal to the value of the improvements which you placed upon it?

Counsel for plaintiff objects to that question as it is leading and suggestive. Objection overruled. To which ruling counsel for plaintiff excepts, reserves the point and tenders this in lieu of a bill.

94 A. That is what I think. It always rents four or five months ahead.

Q. From the time of your purchase in 1882 up to and including the year 1900, did you pay taxes upon that property?

A. Yes sir.

Q. State whether or not your tax receipts prior to the year 1886 were preserved by you?

A. Yes sir.

Q. Have you all the receipts or are some of them lost or mislaid I mean from 1882 up to 1886 both years inclusive?

A. I have all my receipts except four, I believe, that I have not got. Some of them were mislaid, I put them in my pocket book and did not care so much as the taxes were paid.

Q. Have you the tax receipts for the years '82, '83, '84 and 1886?

A. That is what I gave you.

Q. Were the tax receipts in your possession or are they lost or mislaid with the exception of this?

A. They are lost, I tell you.

Q. Then the receipt dated February 14/85 is the only receipt which you have for taxes paid by you prior to the year 1887?

A. Yes, that is the only one I could find.

Q. Well, that receipt dated Feb. 14/85 was it a partial or full receipt?

A. It was a partial receipt.

Q. Please state how much taxes you paid yearly on that particular property from the year 1882 up to and including the year 1886?

Counsel for the plaintiff objects for the same reason as urged to the testimony of Sittig. Same ruling and same bill reserved.

A. I could not tell because it was all put in a bulk and I never made the calculation exactly and it never was stated separate, you know.

Q. Did you pay as much as $25 a year for taxes on that property?

95 Counsel for plaintiff objects on the same ground as heretofore urged. Court sustained objection. To which ruling counsel for defendant excepts, reserves the point and tenders this in lieu of a bill.

Q. How much were those lands assessed from '82 to '86 included?

Objected to on the ground that the assessor or tax collector is the proper one to testify to these facts and the tax receipts themselves should show. Court overrules objection for the same reason given in testimony of Sittig. To which ruling counsel for plaintiff excepts, reserves the point and tenders this in lieu of a bill.

A. It was assessed from $2.50 to $3.50, it kept rising every year.

There was an increase of appraisement every year on the land and it is up now to $5.00, so you see, not knowing the amount of it I could not say how much tax I paid on that particular property.

Q. Do you know the amount of tax that Victor Sittig paid on his property?

A. When I paid for him I paid $21.00.

Counsel for the plaintiff objects on the same ground as in the testimony of Sittig, same ruling and same bill reserved.

Q. What you paid for yourself on your part, was it as much as what you paid for Victor Sittig on his part?

A. Yes, it was.

Cross-examined:

Q. How much of this land did you have leveed Mr. Chachere?

A. There ought to have been some 350 acres maybe 360, I never measured it. I just took the three lines up to the woods and took in part of the woods.

Q. The rice crops that have been raised on this land and other crops have been raised by renters?

A. Not all the time, no sir.

Q. For the last three years?

A. Yes, sir.

96 Q. How much rent did you get?

A. The first year I had to pay $40 out of my pocket and the third year I paid out $600.

Q. Then those levees did not do you much good those years?

A. No sir.

Q. Did Mr. Sittig have any other property at the time he bought this property at tax sale?

A. No sir.

Q. Did he have any horses, cattle, sheep or hogs?

A. I believe he had them there.

Q. Did he have any other property five years afterward?

A. Yes sir.

Q. What kind of property did he have?

A. Some cows, a couple of horses, couple yoke of oxen.

Q. Any lumber on the yard?

A. Well, a little. You know, it was a small mill.

Q. When did he first buy other land than the land he claims in this suit?

A. In '82.

Q. That land was assessed to him?

A. Yes sir.

Q. You have how many acres of land assessed to you in this parish?

A. I could not tell you.

Q. Is it 1000 acres?

A. No sir, I ought to have in this parish about 600 acres.

Q. That makes you only one hundred acres in addition to this tract?

A. Yes sir.

Q. Have you any personal property assessed in this parish?

A. No sir.

Q. Have you any agricultural implements?

A. No sir, no agricultural implements whatever.

97 Q. Do you know Bennett Joplin?

A. No sir.

Q. You have been living in the parish 69 years?

A. Yes sir, and he was dead 69 years before me.

Q. What makes you know that?

A. Because I heard him talked of. I heard Mr. Prudhomme say there was an old American came there by the name of Joplin but he was gone too long to recollect.

Q. If he was dead how could he be paying taxes on this property?

A. I did not know that he paid any taxes?

Q. You said the owners did not care enough to pay the taxes, who did you have reference to?

A. Those lands that were sold for taxes.

Q. Who did you have reference to when you spoke of the Joplin land?

A. I meant the heirs of the Joplin land.

Q. Then you knew at the time you bought this land that Joplin was dead?

A. No sir, I did not, but from what I heard he must have been dead, because they were old people, very old and knew nothing of him and then he was an old man, so I suppose he was dead and left no heirs.

Q. How long ago did you know this?

A. I knew that since 1856 the year I married.

Q. Were you present when the survey was made which was testified to by Mr. Sittig?

A. Yes sir, I was there. I had land on both sides of that tract.

Re-examined:

Q. How long af[illegible] you bought that property from Victor Sittig did you make that fence on it?

A. Well, immediately after I bought it. He had some

98 fence on it and I put a man right straight on it and began working that land. The man was working on the place and I made a bargain with him and he kept working right on.

Testimony of W. F. Brooks—Marked "10."

W. F. Brooks, being duly sworn, says:

Q. Mr. Brooks, how old are you?

A. Forty-eight.

Q. What office have you held in this parish for the past eight years?

A. Assessor.
Q. Where were you residing in 1871?
A. I was in Texas, I believe. I spent a year out there in '71.
Q. When did you go to reside near Prudhomme City?
A. In the fall of '72 I think.
Q. And you resided out there from the fall of '72 up to eight years ago?
A. Yes, sir.
Q. Are you acquainted with the property which is the subject matter of this dispute?
A. Yes sir., I am with the land Mr. Chachere bought and have been over it many a time.
Q. From the time of your going to Prudhomme City in '72 to reside up to your coming to this place, who had been occupying and in possession of that land?
A. Victor Sittig was for a while and afterwards Mr. Chachere bought a part of it. He owned it for some time.
Q. Victor Sittig was in possession of it until he sold to Chachere?
A. All of it until he sold to Chachere.
Q. And subsequent he has been in possession of the other?
A. Ever since up to some time ago I heard he had sold.
Q. That portion that he sold to Mr. Boagni, has he put any improvements on it?
99 A. I don't know, Judge. About 22 or 23 years ago there were some improvements on it but since I do not remember whether there are any or not. I do not remember going down there since then. I worked there at that time in the neighborhood.
Q. And during your residence out there Victor Sittig was in possession of the whole tract up to the time he sold a part to Chachere?
A. Yes sir.
Q. And thereafter he was in possession of the remainder until he sold to Boagni?
A. Yes sir.
Q. Could you state whether that property was assessed to Victor Sittig, I mean the remainder?
A. Yes sir.

Testimony of S. M. Hundley—Marked "11."

S. M. HUNDLEY, being duly sworn, says:

Q. Did you ever reside at or near the land in dispute in this suit?
A. Yes sir.
Q. When did you go there to reside?
A. Since '71.
Q. How long did you remain there?
A. I only remained there a couple of years and then I moved from there and in '79 I went back and bought a place.
Q. Are you acquainted with the land in dispute in this suit?
A. Yes, sir.

Q. Who was in possession of the land when you first went there?
A. Mr. Victor Sittig up to the time he sold part of it to T. C. Chachere.
Q. After having disposed of a portion of the tract to Mr. Chachere, did he remain on the other portion of the tract?
100 A. Yes, sir.
Q. How do you know that, Mr. Hundley?
A. I lived near there and I worked for several years for Mr. Brooks in the assessment office.
Q. Did he have any improvements on that tract he sold Boagni?
A. Yes sir, he had a saw mill.
Q. Sawed lumber there from the land?
A. Yes sir.
Q. Do you know that he was in possession of that land until he sold Mr. Boagni?
A. Yes sir, he lived there.

Cross-examined:

Q. Mr. Hundley, are you well acquainted with the condition of the improvements on the tract of land now claimed by Mr. Chachere?
A. No, sir, I have not been on that land for several years. I was well acquainted there and he had a good house but the dwelling house was burned. Since that time I don't think I have been on the tract of land. He has several smaller houses there now and a large barn but I have not been on the place.
Q. Do you know about how old those houses are?
A. No sir. I do not think the barn is over five or six years old.
Q. The others were built before that?
A. One of them was, yes sir. I think they put up some houses since they built the barn.

Testimony of Martin Carron—Marked "12."

MARTIN CARRON, being duly sworn, says:

Q. How old are you?
A. Sixty-four years.
101 Q. What is your occupation?
A. Notary public.
Q. Ever held any office?
A. Yes sir.
Q. What was it?
A. Justice of the peace.
Q. Anything else?
A. Police juror, and I am ashamed to say it, a member of the legislature.
Q. Do you know the land which is the subject matter in this dispute?

A. No sir, I know nothing about the land. I do not know the lines of my own land.

Q. Do you know where Victor Sittig was residing from 1871 until recently?

A. Yes sir.

Q. What land was he residing on?

A. I suppose it was the land which is in controversy here.

Q. As a matter of fact, you do not know whether this is the land in controversy or not?

A. No sir, I do not.

Q. You have heard the witnesses testify?

A. Yes sir.

Q. And you know he was residing upon the land the witnesses testified to?

A. Yes sir, I know he was residing in the same place. He resided on this side for a while and then he crossed over and lived there ever since.

Q. Then you know that at one time he resided on one portion of the bayou and subsequently on the other portion?

A. Yes sir.

Q. Do you know whether he has a saw mill on a portion of that land?

A. I know he has a saw mill on the woods which is said to
102 be upon that land.

Testimony of W. T. McBride—Marked "13."

W. T. McBRIDE, being duly sworn, says:

Q. What is your occupation?

A. Tax collector.

Q. Deputy sheriff and *ex-officio* tax collector of the parish of Acadia.

A. Yes sir.

Q. Please state whether the tax rolls from the years 1887 to 1900 both inclusive are in your office in your possession?

A. Yes sir, in my office

Q. Have you examined these tax rolls with a view of ascertaining the amount of taxes paid by Victor Sittig and T. C. Chachere from the year 1887 to the year 1900 both years included?

A. Yes sir, by your request I examined them.

Q. Will you please state whether the land in controversy assessed part to Sittig and part to Chachere are specially assessed?

A. No sir, they have always been regularly assessed with the exception of one year that Mr. Sittig was not assessed.

Q. Are you in possession of a tax list in existence in the parish of Acadia, for the years preceding the year 1900?

A. No sir, they may be there but it would take a century to find them.

Q. Will you please state whether all the property owned by Sittig is on the tax roll?

A. I only find he is assessed with two tracts of land.

Q. Is there anything showing what the assessment on one is or the amount of assessment on the other?

A. No sir, they are assessed together.

103 Q. Does that same condition exist in relation to T. C. Chachere?

A. Yes sir, the same.

Q. Will you please take this memorandum made by you and state to the court what you approximate the taxes paid by T. C. Chachere on that part of the property in dispute in his possession from the year 1887 to the year 1900 both years included?

Objected to by counsel for plaintiff, first, because the tax rolls are the best evidence and second, the tax receipts fail to show the land assessed. The witness has already stated that several tracts of land, including the land in controversy here, were scooped together under one valuation, and witness would have to testify as to matters and things within the knowledge only of the assessor and he is the proper person to testify as to the valuation placed upon the property in controversy. And it is urged that the evidence is secondary and inadmissible.

Objection overruled. To which ruling, counsel for plaintiff excepts, reserves the point and tenders this in lieu of a bill.

A. (In answer to question, witness produces exhibit marked "14" which explains the matter.)

Q. Will you please state the approximate amount of taxes paid by Victor Sittig from the year 1887 to 1900 both years included on the property in his possession, the same being part of the land in controversy.

A. I submit statement marked "15" prepared by me which gives it in detail the amount of taxes paid during that time.

Cross-examined:

Q. Mr. McBride, the taxes that you carry out here in document marked "14" are they all the taxes that Chachere paid for '87 on all his property?

A. No sir, it is only a portion of the property.

104 Q. How do you arrive at that amount of taxes that he had to pay on the property in controversy, when you state that it was all assessed in bulk with other property?

A. I just took a number of acres and divided them to ascertain the value of one acre and then multiplied that by the number of acres that was in controversy and made the taxes on that.

Q. Do you know whether all the land was valued by the assessor at an equal value per acre?

A. No sir, I do not.

Q. Then you were giving this land at so much per acre?

A. Yes sir.

Re-examined:

Q. Coul- the taxes on that property be less than the approximation you have made?
A. Hardly.
Q. Could it not be much more than the approximate you have made?
A. Yes sir.

Statement of W. T. McBride, D'y Tax Collector, Showing Taxes of T. C. Chachere—"Marked 14."

Taxes paid by T. C. Chachere in 1887 ..... $12.00
500 acres known as the old mill stand.
Taxes paid 1888..... 15.68
500 acres situated in Faquetique
Taxes paid 1889..... 16.00
500 acres situated in Faquetique
Taxes paid 1890..... 16.00
500 acres situated in Faquetique
Taxes paid 1891..... 19.20
500 acres in La Bouef cove
Taxes paid 1892..... 21.60
105 450 acres in La Bouef cove
Taxes paid 1893..... 21.12
440 acres in La Bouef cove
Taxes paid 1894..... 21.12
440 acres in La Bouef cove
Taxes 1895..... 19.20
400 acres in La Bouef cove
Taxes paid 1896..... 19.20
Taxes paid 1897..... 13.12
435 acres bought of Jopling
Taxes paid 1898..... 19.20
400 acres known as Jopling farm
Taxes paid 1899..... 19.23
434 acres known as the Le Bouef Cove place
Taxes paid 1900..... 19.20
435 acres bd. N. by Bayou Mallet, S. by Arnold, W. by Duson

Filed Sept. 20/1901,
R. T. CLARK, *Clerk.*

Statement of W. T. McBride, D'y Tax Collector, Showing Taxes of Victor C. Sittig—"Marked 15."

Taxes paid by Victor Sittig in 1887..... 10.61
On 420 acres N. by Chachere, S——
Taxes paid 1888..... 10.24
400 acres bd. N. by T. C. Chachere, S. by W. F. Brooks

Taxes paid 1889 ..... 12.16
80 acres bd. N. by S. Matt, S. by R. Sittig
Taxes paid 1890 ..... 10.24
400 acres bd. N. by Vilten, S. by W. F. Brooks
Taxes paid 1891 ..... 10.24
400 acres bd. N. by E. Veltin, S. by W. F. Brooks
Taxes paid 1892 ..... 13.76
400 acres bd. N. by T. C. Chachere, S. by Richards lands
Taxes paid 1893 ..... 29.44
106 600 acres bd. N. by O. Le Doux, S. by T. C. Chachere
Taxes paid 1894 ..... 19.24
400 acres bd. N. by Chris Rupert, S. by F. Richard
Taxes paid 1895 ..... 19.20
400 acres bd. N. by Duson, S. by ——
Taxes paid 1896 ..... 19.20
400 acres bd. N. by land Co., S. by Pac. Imp. Co.
Taxes of 1897—not on rolls
Taxes paid 1898 ..... 20.64
430 acres bd. N. by land Co., S. by same
Taxes paid 1899 ..... 20.78
433 woodland bd. N. by Bayou Mallet, S. by C. Rupert
Taxes of 1900 paid by Boagni

Filed Sept. 20/1901.

R. T. CLARK, *Clerk.*

Tax Receipts of Date March 27/93, Being Taxes of Victor Sittig.

No. 1600. Ward 3. STATE OF LOUISIANA,
Taxes 1892. PARISH OF ACADIA, *M'ch 27th*, 1893.

Received of Victor Sittig twenty and 81/100 dollars, amount of taxes as itemized for the year 1892 on property described on reverse hereof, in accordance with law.

M. J. ANDRUS,
D'y Sheriff and ex-Officio Tax Collector, Acadia P'h.

State tax 7.26
Parish tax 12.10
Poll tax 1.00
Interest ..... .45

Total 20.81

122 acres of land bd. N. by Carrier lands, S. by T. C. Chachere.
107 Real estate 400 acres bd. N. by T. C. Chachere, S. by Richard lands and impts. # 1120.00. Live stock $80.00
Vehicles $10.00

Tax Receipt of Date Sept. 2/96, Being Taxes of Victor C. Sittig"—Marked 17."

No. 1791. Ward 3. STATE OF LOUISIANA,
Taxes 1895. PARISH OF ACADIA, *Sept.* 2, 1896.

Received of Victore Sittig thirty and 58/100 dollars amount of taxes as itemized for the year 1895 on property described on reverse hereof, in accordance with law.

A. D. LE BLANC,
D'y Sheriff and ex-Officio Tax Collector, Acadia Parish.

State tax	10.47
Parish tax	17.45
Poll tax	1.00
Interest	1.66
Total	$30.58

Tax Receipts Paid by T. C. Chachere, Dated Feb'y 14/85, Jan'y 31/89, Feb'y 19/91, May 2/91, March 15/93, and July 18/88—" Marked 18."

No. 221. STATE OF LOUISIANA,
Taxes 1892. PARISH OF ACADIA, *M'ch* 15, 1893.

Received of T. C. Chachere one hundred and twenty & 65/100 dollars, amount of taxes as itemized for the year 1892 on property described on reverse hereof, in accordance with law.

M. J. ANDRUS,
D'y Sheriff and ex-Officio Tax Collector, Acadia Parish.

State tax	44.58
Parish tax	74.30
Poll tax	1.00
Interest	1.76
Total	$120.64

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Acres.

300 in Mammouth known as the Boutin tract.
450 " " " " " Tacket "
100 in Prairie Hayes bd. N. by W. F. Brooks
160 bounded N. by Bayou Mallet, S. by R. A. Shanton, W. by Mrs. Prudhomme
200 bounded N. by P. J. Levargne, S. by E. Andrepont
500 in Prairie Hayes known as the Joplin tract
40 in Prairie Hayes known as the Amy tract

1750 acres & imp'ts	$6870.00
Live stock	460.00
Vehicles	100.00
	$7430.00

Clerk's No. 4663.

No. 1141. STATE OF LOUISIANA,
PARISH OF ST. LANDRY,
Parish taxes for 1884. OPELOUSAS, *Feb.* 14/1885.

Received of T. C. Chachere eleven dollars, amount of parish taxes for the year 1884.

F. A. RING,
D'y Tax Collector, St. Landry.

No. 281. Ward 3. STATE OF LOUISIANA,
Taxes 1888. PARISH OF ACADIA, *Jan'y* 31/1889.

Received of T. C. Chachere — dollars amount of taxes as itemized for the year 18— on property described on reverse hereof, in accordance with law.

State tax	29.64
Parish tax	49.40
Poll tax	1.00
Total	80.04

E. W. LYONS,
Sheriff and ex-Officio Tax Collector, Acadia Parish.

109 No. 303. Ward 3. STATE OF LOUISIANA,
Taxes 1890. PARISH OF ACADIA, *Feb'y 19th*, 1891.

Received of T. C. Chachere, Sr., one hundred and 45/100 dollars amount of taxes as itemized for the year 1890 on property described on reverse hereof, in accordance with law.

M. J. ANDRUS,
D'y Sheriff and ex-Officio Tax Collector, Acadia Parish.

State tax	37.30
Parish tax	62.15
Poll tax	1.00
Total	$100.45

No. 302. Ward 4. STATE OF LOUISIANA,
Taxes 1890. PARISH OF ACADIA, *May 2nd*, 1891.

Received of T. C. Chachere four and 95/100 dollars, amount of taxes as itemized for the year 18— on property described on reverse hereof, in accordance with law.

M. J. ANDRUS,
D'y Sheriff and ex-Officio Tax Collector, Acadia Parish.

State tax	1.40
Parish tax	2.35
Poll tax	1.00
Interest	.10
Costs	.10
Total	4.95

No. 288. Ward 3. STATE OF LOUISIANA,
Taxes 1887. PARISH OF ACADIA, *July* 18, 1888.

Received of T. C. Chachere No. 1 sixty five and 66/100 dollars amount of taxes as itemized for the year 1887 *of* property described on reverse hereof, in accordance with law.

E. W. LYONS,
Sheriff and ex-Officio Tax Collector.

110	State tax	23.04
	Parish tax	38.40
	Poll tax	1.00
	Interest	3.22
	Total	65.66

No. 289. Ward 3. STATE OF LOUISIANA,
Taxes 1887. PARISH OF ACADIA, *July* 18, 1888.

Received of T. C. Chachere No. 2, forty nine and 17/100 dollars amount of taxes as itemized for the year 1887 on property described on reverse hereof, in accordance with law.

E. W. LYONS,
Sheriff and ex-Officio Tax Collector.

State tax	17.52
Parish tax	29.20
Interest	2.45
Total	49.17

Decision of the Land Office in New Orleans Involving the Property in Controversy.

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE,
NEW ORLEANS, LA., *April* 6, 1900.

Hon. James Lewis, surveyor general, United States land office, city.

DEAR SIR: This office is in receipt of your communication dated the 29th ultimo, asking us to decide the conflicts existing between the claim of Bennet Jopling *O. B. B.* 1927 and other claims. We have the honor to report as follows:

The claim of Bennet Jopling, O. B. B. 1927, was confirmed by the commissioners of the western district of Orleans Territory, under certificate of confirmation No. B. 1927 dated March 11, 1812 in pursuance of authority confirmed upon them by the fourth section of the act of March 3, 1807, U. S. Stat. 2–440, and the same has been surveyed and located to embrace sections 41, 65 and 66, of T. 7, R. 1 E., and section 48, T. 7 R. 1 W., southwestern district, La.

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That part embracing section 65, T. 7 S., R. 1 E., is in conflict with the claim of John B. Staley, Jun. O. B. B. 1910, which was confirmed by the same commissioners, under certificates of confirmation No. B. 1910, dated February 28, 1912, in pursuance of the same authority.

That part embracing section 66, T. & S., R. 1 E., and section 48, T. — S., R. 1 W., is in conflict with the claim of William Johnson O. B. B. 99, which was confirmed by the same commissioners, under certificate of confirmation No. 29, dated April 12, 1811, in pursuance of the same authority.

Pursuant to authority conferred by sec. 6 of the act of March 3, 1831, (U. S. Stat. 4 p. 492) and following precedents set in decisions rendered by the Supreme Court of the United States in Choteau *vs.* Eckhart (2 Howard 375, and The United States *vs.* King—3 Howard 773, wherein it is held that the date and time of confirmation of claim must govern in deciding the rights of adverse claimants, we decide as follows:

The claims of John B. Staley, Jun. O. B. B. 1910 and William Johnson, O. B. B. 99, being superior in date of confirmation, must be recognized as valid claims, to the exclusion of the claim of Bennet Jopling O. B. B. 1927.

This decision shall in nowise be considered as precluding a legal investigation and decision by the proper judicial tribunal as between the parties claimant, but shall only operate on the part of the United States as a relinquishment of any and all right and title to the land in question.

Given under our hands this 6th day of April 1900.

WALTER L. COHEN, *Register.*
CHARLES P. JOHNSTON, *Receiver.*

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I hereby certify that the above and foregoing is a true and correct copy of original on file in this office.

CHARLES P. JOHNSTON, *Receiver.*

Bill of Exception.

18th Jud'l Dist. Court, State of Louisiana, Parish of Acadia.

F. M. JOPLIN
vs.
T. C. CHACHERE ET AL. } No. 1267.

Be it remembered that on the trial of the above numbered and entitled suit, plaintiff offered in evidence a certified copy of the opinion rendered by the register & receiver of the U. S. land office at New Orleans, in the matter of the conflict between the Bennet Jopling private land claim and that of John B. Staley, Jr., and William Johnson, to which offering counsel for defendants objected on grounds noted in the minute of evidence, and which objection was sustained by the court, and the document ruled out for the reasons, —

To which ruling of the court counsel for plaintiff thereupon excepted, reserving the bill of exception, which is read, approved and signed in open court before judgment, at Crowley, La., this September 27th 1901.

C. DEBAILLON,
Judge of said Court.

Filed Sept. 27/1901.
R. T. CLARK, *Clerk.*

Letter from Commissioner to E. L. Wells, Dated Feb. 17, 1900.

DEPARTMENT OF THE INTERIOR,
113 GENERAL LAND OFFICE,
WASHINGTON, D. C., *Feb'y* 17, 1900.

Edward L. Wells, Leesville, Louisiana.

SIR: In your letter of February 7, 1900, you ask to be advised as to the status of the private land claim of Bennett Jopling, same being No. 1927, class B, in the report of the old board of commissioners of the western district of the Territory of Orleans, published in vol. 2, American State Papers, p. 720, being surveyed as townships 7 S. ranges 1 E. and W. You wish to know whether patent was ever issued for this claim, and if so to whom, and if not, you desire to be informed as to the reason for same.

I have the honor to advise you that it does not appear that the claim above described has ever been patented. I have further to advise you that the township plats show that this claim is in partial conflict with two other private land claims, and it does not appear that the conflict has ever been adjudicated. Before patent

will issue for a claim in conflict with others, it is necessary that the register and receiver adjudicate the conflict in accordance with the law. These claims are within the New Orleans district, and for information as to the manner of adjudicating conflicts you are referred to the register and receiver at that place.

Respectfully, BINGER HERMANN,
Commissioner.

Filed Sept. 20/1901.
R. T. CLARK, *Clerk.*

Letter from Surveyor General to E. L. Wells, M'ch 29/00.

114 Mr. E. L. Wells, Leesville, La.

SIR: I am in receipt of your letter of the 28th inst., and in reply thereto will state that the case is now being investigated and as soon as the hon. register and receiver render their decision in the matter of the Bennet Jopling private land claim you will be promptly notified.

In this connection will state that such cases are often complicated and require time to make decisions. You may rest assured that this office has no intention to delay the matter or to evade answering your letters.

The case will receive attention in due course of business and every effort will be made to expediate the matter.

Very respectfully, JAMES SEINS,
Surveyor General, La.

Filed Sept. 20, 1901.
R. T. CLARK, *Clerk.*

Letter from Commissioner to E. L. Wells, Dated May 18/00.

WASHINGTON, D. C., *May* 18, 1900.

Mr. Edward L. Wells, attorney at law, Leesville, La.

SIR: In your letter of May 12, 1900, you ask to be informed as to how soon a patent will be issued for the private land claim of Bennet Jopling, you having been advised that the patent plat of said claim had been forwarded to this office by the surveyor general.

I have to advise you that before patent can issue for said claim it will be necessary for the register and receiver at New Or-
115 leans, La., to issue a patent certificate in accordance with the provisions of the act of March 3, 1807 (2 Stats. 440.)

By letter "G" of this date the local office at New Orleans has been directed to issue a patent certificate and upon the receipt of the same, should no objections appear, the case will be taken up for consideration without any unnecessary delay.

Respectfully, BINGER HERMANN,
Commissioner.

Filed Sept. 20/0901.
R. T. CLARK, *Clerk.*

Testimony of Ed. L. Wells—Marked "L."

A copy of the decision of the United States land office at New Orleans, marked "I," was received by me in April and I paid two dollars for the copy.

Minute Entry, Sept. 27, 1901, *Showing Judgment.*

FRIDAY, *September* 27, 1901.

Court met pursuant to adjournment with his honor C. Debaillon presiding judge:

T. M. JOPLIN
vs.
T. C. CHACHERE. } No. 1267.

Judgment rejecting plaintiff's demand and decreeing defendants the owners of the land as claimed by each respectively and quieting them in their title and possession. See decree.

Judgment of the District Court.

116 District Court, Parish of Acadia, Louisiana.

FERDINAND M. JOPLIN
vs.
T. C. CHACHERE ET AL. } No. 1267.

This is a petitory action by the plaintiff claiming the ownership of a tract of land described as section forty-nine township seven south of range one west, and section forty-one township seven south of range one east, containing 870.06 acres.

He annexed — his petition, as a basis of his right to sue, a patent to the land acquired by virtue of the act of Congress approved March 3, 1807, and predicated upon the treaties of the United States of America.

The defendants, answering, allege, that they were possessors in good faith and under valid subsisting titles extending over a period of some twenty-eight years, in virtue of a tax sale made to them by the then collector of the parish of St. Landry duly confirmed by the auditor of this State, and that they had been in continuous possession of the land ever since. Upon the trial of the case the plaintiff offered the patent which was annexed to his petition, together with all of the accompanying documents, and additional evidence of lesser note. The defendants, in return, offered a certificate of confirmation from the old board of commissioners, dated

March, 12 1812, which confirmed to Bennet Joplin, the patentee, by virtue of ten years' occupancy, the tracts of land mentioned in this suit; and other evidence going to show the purchase of this property at tax sale on Sept. 30, 1871.

In argument the plaintiff contended that the sole question at issue was the right of the State to sell the property for taxes, insisting that the right to tax did not arise until the issuance of the patent. The defendant- replying insisted that the right to tax did not exist upon the actual issuance of the patent, but upon the right of the claimant to demand one.

117 The court, after reviewing the authorities submitted to it, arrived at the following conclusion :—

That the property herein sued for is the property which was confirmed to Bennet Joplin by the board of commissioners acting under the act of Congress approved March, 3, 1807, and that this act of Congress confirming title to the land in dispute was ratified and approved by the Congress of the United States on April 29, 1816.

The court is further of the opinion that the land was duly surveyed and its location made definite and certain by the survey of Noah H. Phelps, made in the first and second quarters of 1856, as appears by patent.

The court is further satisfied that by virtue of the act of Congress confirming this land grant, together with the survey of the same, as appears by the patent introduced in evidence by the plaintiff, there was a severance of the land from these United States as far back as 1856.

Moreover, this being a petitory action, it was incumbent upon plaintiff to recover — the strength of his own title and not upon the weakness of his adversary's. If there were defects in the certificate of confirmation or there had been no public survey made in the manner required by law, as contended for by plaintiff, it was his duty to establish this fact. "Title to public lands dates from the issuance of the certificate and not from that of the patent, and the party holding a patent of later date than that of a certificate or warrant carried the burden of proving illegalities in the certificate necessary to make it prevail over the later." 52 A., 893; Betz *et al.* *v.* Illinois Central R. R. Co., 24th. Southern Reporter, 644.

"Certificate- of purchase from the proper Government officers made in accordance with the law and fairly obtained, operate as equitable severance of the lands from the public domain and pass the lands so held in to the domain of private property, making them the subjects of private contract and are sufficient evidence of

118 title to support a petitory action and subsequently to support prescriptive rights based thereon—

"The patent cannot prevail against prescription founded on possession under equitable title derived from the Government itself and operating divestiture of title and more than ten years prior to the institution of the suit." Gay *v.* Ellis, 33 A. 249.

"Where a party holds land under a grant confirmed by act of Congress followed by surveys locating the lands of the grant in

place and by possession extending back more than seventy years, it will be protected from a claim under a certificate from the receiver of the land office showing an entry of a date subsequent to the original claim and the party in possession under the confirmed grant may plead prescription." 104 La. 603, (29 South, 247) Teddlie *et al. v.* McNeely *et al.*

For these reasons and by reason of the further fact that the tax title under which defendant claims has never been assailed and unless proved to be of absolute nullity must prevail 47 A., 326, Belani and Johnson *vs.* Gebelin and Duggan: Constitution of 1868, art. 118; Constitution of 1879, art. 210, and Constitution of 1898, art. 223; it is therefore

Ordered, adjudged and decreed that the claim- of the plaintiff herein be and the same are hereby rejected at his costs; that the plea of prescription set up by the defendants be and the same is hereby sustained and that they be quieted in their title and possession of the land fully described in the plaintiff's petition and in defendant's answer.

Done, read and signed in open court this 28th day of September 1901.

C. DEBAILLON,
Judge 18th District of Louisiana.

Filed Sept. 28th. 1901.
R. T. CLARK, *Clerk.*

Minute Entry, Sept. 28th, 1901, Showing Application and Order for Appeal.

SATURDAY, *September 28th*, 1901.

Court met pursuant to adjournment with his honor C.
119 Debaillon presiding judge.

F. M. JOPLIN
vs.
T. C. CHACHERE ET AL. } No. 1267.

Upon motion of plaintiff's counsel it is ordered that a devolutive appeal be and is granted the plaintiff herein, returnable before the supreme court at New Orleans, Louisiana, on the third Monday of November, 1901, upon executing a bond for the sum of three hundred dollars.

There being no further business, court adjourned until its next sitting in due course.

C. DEBAILLON,
Judge 18th Judicial District of La.

Appeal Bond.

STATE OF LOUISIANA, }
Parish of Acadia. }

Know all men by these presents: That we, F. M. Joplin individually and as administrator of the succession of Bennet Jopling deceased, as principal and —— —— as security are held and firmly bound unto Raymond T. Clark, clerk of court in and for Acadia, parish, La., and to his successors in office, in the sum of ($300) three hundred dollars, and for the payment whereof we bind ourselves, our heirs, executors and administrators, firmly by these presents. Dated the 4th day of October, A. D. 1901.

Whereas, the above bounden F. M. Joplin in his said capacity as administrator and individually, has applied for and has been granted an order of appeal from a certain final judgment rendered against him in this district court in and for the parish of Acadia in favor of T. C. Chachere and John. P. Boagni in suit No. 1267, on the docket of said court, entitled F. M. Joplin *vs.* T. C. Chachere *et al.*
120 Said appeal being returnable to the supreme court of Louisiana on November 18th, 1901.

Now, therefore, the condition of the above obligation is such that if the said F. M. Joplin in his said capacities shall prosecute this devolutive appeal, and shall satisfy whatever judgment may be rendered against him or if the same shall be satisfied by the proceeds of the sale of his estate, real and personal, if he be cast in the appeal, then and in that case the above obligation to be void and null; otherwise the said security shall be liable in his place.

F. M. JOPLIN,
Individually and as Administrator.
ROBERT FAIRLEY.

Filed Oct. 4th, 1901.
D. B. HAYES, *D'y Clerk.*

18th Judicial District Court, Parish of Acadia, State of Louisiana.

F. M. JOPLIN
vs.
T. C. CHACHERE ET AL. } No. 1267.

In this case, it is hereby agreed by counsel for plaintiff and defendants that the original patent from the United States to Bennet Jopling, showing the location of the land in controversy shall be incorporated in the transcript of appeal in lieu of a copy thereof.

This agreement being solely to avoid the trouble, and possibility of mistake, in making a copy thereof.

EDW. L. WELLS,
Attorney for Plaintiff.
GILBERT L. DUPRE,
Attorney for John P. Boagni.
W. C. PERRAULT,
Attorney for T. C. Chachere.

Filed Oct. 18/1901.
R. T. CLARK, *Clerk.*

121 STATE OF LOUISIANA, }
Parish of Acadia. }

I, Raymond T. Clark, clerk of the 18th judicial district court in and for said parish and State, do hereby certify that the within and foregoing 146 pages contain a true and correct transcript of all proceedings had, documents filed and evidence adduced in the cause entitled F. M. Joplin *vs.* Theodose C. Chachere *et al.*, No. 1267 of the civil docket of said court.

Witness my hand and seal of office at Crowley, La., this 12th day of November, 1901.

R. T. CLARK,
Clerk of Court.

122 4-446.

The United States of America to all — whom these presents shall come, Greeting:

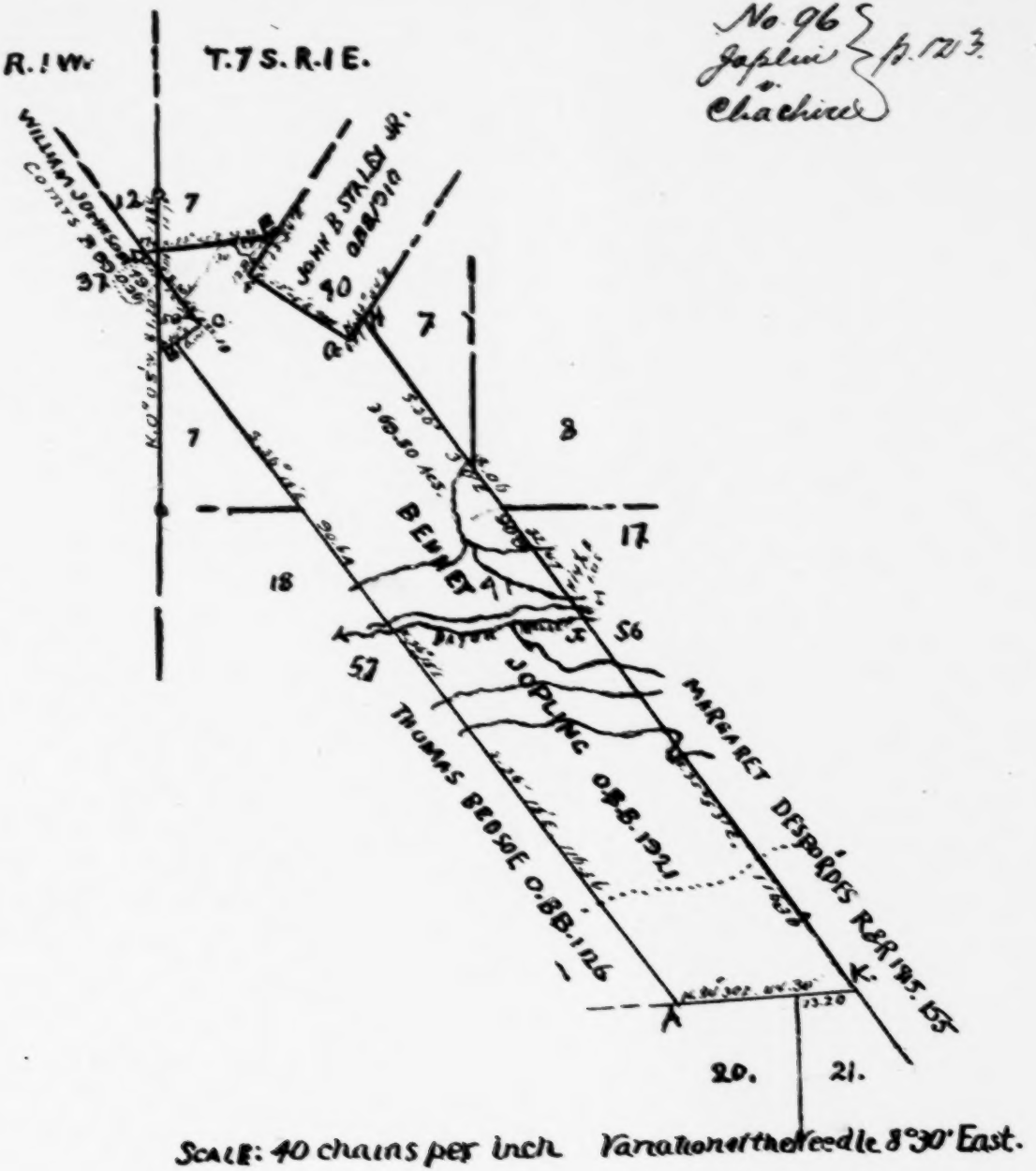
Whereas, there has been deposited in the General Land Office of the United States a patent certificate numbered four hundred and ninety-nine issued by the register and receiver of the United States land office at New Orleans, Louisiana on the twenty-fifth day of May, one thousand nine hundred, whereby it appears that the private land claim of *Bennet Jopling*, being number one thousand nine hundred and twenty-seven, cl-ss B, in the report of the old board of commissioners for the western district of the Territory of Orleans, was confirmed by the said commissioners under the authority conferred upon them by the act of Congress approved on the third day of March, one thousand eight hundred and seven, entitled, "An act respecting claims to land in the Territories of Orleans and Louisiana;"

And whereas, the said claim has been regularly surveyed and designated as section forty-nine in township seven south of range one west and section forty-one in township seven south of range one east, of the Louisiana meridian, in the south western district of Lou-

isiana, containing eight hundred and seventy acres and six hundredths of an acre, as appears by a plat and descriptive notes thereof on file in the General Land Office duly examined and approved by James Lewis, surveyor general for Louisiana, on the ninth day of May, one thousand nine hundred, which said plat and descriptive notes are herein inserted and made a part of these presents,
123 and are in the words and figures following, to-wit:

(Here follows diagram marked p. 123.)

9686 37


No. 96
Joplin
Chachiee
p. 123
T.7 S. R.1 W.
T.7 S. R.1 E.
WILLIAM JOHNSTON
JOHN B. STALLY JR.
BENNET
JOPLIN
THOMAS BEOGE
MARGARET DESPORDES
SCALE: 40 chains per inch
Variation of the needle 8°30' East.

"The above plat represents the survey of the private land claim of Bennet Jopling confirmed by the old board of commissioners for the western district of Louisiana in pursuance of authority conferred upon them by the 4th section of the act of Congress approved March 3rd, 1807, entitled 'An act respecting claims to land in the Terri-
"tories of Orleans and Louisiana as appears by their con-
124 "firmation certificate No. B 1927, dated March 11th, 1812,
"the following being a description of the surfey taken from "the approved field notes of N. H. Phelps, deputy surveyor:

"Beginning at A the south west corner of this claim and the "south-east corner of the claim of Thomas Bedsoe, no old corner, "set post in pit. Thence on the west line of this claim and east line "of the claim of Thomas Bedsoe 36° 18' W., 30.30 chs. to a road "N. E. & S. W. 85.00 chs. to woods E. & W. & retrace old line 103.00 "chs. to overflow E. & W. 116.36 chs. to old corner on left bank of "Bayou Mallet, being the north-east corner of the claim of Thomas "Bedsoe (dead) Magnolia 12 12 .9 E. 9 lks. (bears old marks) m-d "hickory 12 S. 64 W. 32 lks. s't gum 12 S. 65½ E. 67 lks. Thence "N. 36° 18 W. 1.18 ch. to opposite bank set post (no old corner) "whence hickory 18 N. 40 E. 12 lks. hickory 16 S. 25 W. 8 lks. "Thence retracing old line between this claim and section 18, N. "36° 18' W. 12.00 chs. leave overflow N. E. & S. W. 37.75 chs. to "line bet. secs. 7 & 18, set post, post oak 14 S. 85½ W. 38 lks., s't "gum 10 N. 35 W. 59 lks., 88.00 chs. to drain S. W. 45 lks. wide, "90.64 chs. to B on the southeast line of the claim of William John-"son, set post, hickory 12 in. N. 85 E. 51 lks., hickory 20. 79 W. 40 "lks. Thence between this claim and the claims of William John-"son old line, N. 59 E. 6.00 chs. to C, a corner common to this claim, "and the claim of William Johnson, old corner red oak, 18 S. 78 W. "19 lks., old bearing with old marks, post oak, 18 N. 62 E. 60 lks. "s't gum 9 N. 37½ W. 79 lks. Thence along the north east line "of the claim of William Johnson N. 30° 54' W. (an old line) 9.36 "chs. cross a bayou west 20 lks., 19.54 chs. to the west b'd'y of T. 7 S. "R. 1 E. 18.84 chs. south of the 1st mile post, set post whence s't gum "9. N. 64 W. 60 lks., white oak 9 N. 62 W. 23 lks. 22.89 chs. to D the "north west corner of this claim set post whence white oak 15 S. 88 "E. 30 lks. Thence between this claim and section 12 N. 83¾
"E. 1.74 ch. to the east b'd'y of T. 7 S. R. 1 W. 15.78 chs. S.
125 "0° 5' E. of 1st mile post, set post, white oak 9 S. 83 W. 18 lks.
"white oak 15 S. 68 E. 30 lks., continuing between this claim "and section 7, 18.05 chs. to bend of bayou where it runs S. W. & "comes from east 32.42 chs. to E. on the west b'd'y of the claim of "John B. Staley, Jr., set post whence holly 10 N. 3 E. 46 lks., s't "gum 9 S. 57 E. 33 lks. Thence between this claim and the claim "of John B. Staley, Jr., on old line, S. 33° 54' W. 3.06 chs. cross bayou "15 lks. wide, 5.96 chs. cross bend of same bayou, comes from N. W. "& runs S. W. 12.96 chs. to F the south west corner of the claim of "John B. Staley, Jr., set post whence post oak 4 N. 71½ E. 38 lks., "post oak 12 S. 6 E. 35 lks. no old corner, continuing between this "claim and the claim of John B. Staley, Jr., old line, S. 55¾ E. 29.11

" chs. to G the south east corner of the claim of John B. Staley, Jr.,
" set post whence blk. oak 10 S. 89 W. 15 lks., blk. oak 15 N. 65 E.
" 26 lks., ash 15 N. 7 E. 21 lks., no old corner, continuing between
" this claim and the claim of John B. Staley, Jr., old line N. 33° 54'
" E. 6.47 chs. to H. a corner on the east b'd'y of the claim of John
" B. Staley, Jr., set post whence red oak 16 S. 23½ E. 25 lks. red oak
" 10 N. 9 E. 43 lks. Thence between this claim and sec. 7 on the
" north east b'd'y of this claim retracing old line S. 36½ E. 16.93 chs.
" to point of prairies near its west end 4.50 chs. wide N. E. & S. W.
" 47.18 chs. to drain S. W. 10 lks. wide 50.40 chs. to line bet. secs. 7
" & 8, set post, white oak 18 N. 4 E. 22 lks., dogwood 7 N. 27¾ W.
" 50 lks., 58.46 chs. to line bet. secs. 8 & 17, set post, dogwood 6 S.
" 56½ E. 44 lks., red oak 20 N. 1 E. 52 lks., 72.93 chs. to overflow
" N. E. 7 S. W. 88.23 chs. to coulee S. E. 20 lks. wide, 90.93 chs. to I,
" corner on bayou, set post, s't gum 18 N. N. 70½ E. 60 lks., maple
" 9 M. 44½ W. 57 lks., no old corner. Thence across the Ba-ou
" Mallet S. 14½ W. 1.05 ch. to J cor. On its left bank, being the lower
" front corner of the claim of Margaret Desbordes, old cor. white
" oak 30 in bearing old marks. Thence retracing old line between
" this claim and the claim of Margaret Desbordes S. 35° 53' E.
126 " 15.00 chs. to drain W. 20 lks. wide 25.00 chs., leave overflow
" N. E. & S. W., 38.00 chs., to prairie, N. E. & S. W., 41.00
" chs. to a road N. E. & S. W., 116.36 chs. to K a corner on the lower
" line of the claim of Margaret Desbordes and common to this claim
" and section 21, p-st in pit. Thence S. 84½ W. 13.20 chs. to line
" bet. secs. 20 & 21 post in pit. 44.30 chs. to A the place of beginning;
" being sections Nos. 49 & 41, in townships No. 7 south, of ranges
" Nos. 1 W. & 1 E. in the south western district, Louisiana, contain-
" ing 870 acres and 06 hundredths of an acre.
" Surveyor general's office, New Orleans, La., May 9th 1900.
" Examined and approved:
" JAMES LEWIS,
Surveyor General, Louisiana."

Filed Sept. 15th 1900—
D. B. HAYES, *D'y Clerk.*

127 *Now know ye*, that the United States of America in consideration of the premises and in accordance with the provisions of the act of Congress aforesaid of the third day of March, one thousand eight hundred and seven, has given and granted and by these presents *does give and grant* unto *Bennet Jopling* and to his heirs the tract of land described and embraced in the foregoing survey.

To have and to hold the said tract of land with the appurtenances unto the said *Bennet Jopling* his heirs and assigns forever.

In testimony whereof, I, William McKinley, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington this sixteenth day of July in the year of our Lord one thousand nine hundred and

of the Independence of the United States the one hundred and twenty-fifth.

By the President :

WILLIAM McKINLEY,
By F. M. McKEAN, *Secretary.*

C. H. BRUSH,
Recorder of the General Land Office.

Recorded vol. 24, p. 502 to 508, inclusive.

Filed Sept. 15 / 1900.
D. B. HAYES, *D'y Clerk.*

128 *Proceedings Had in the Supreme Court of the State of Louisiana.*

Motion for extension of return day.

To the honorable supreme court of the State of Louisiana :

Plaintiff and appellant in the suit of F. M. Joplin *vs.* T. C. Chachere *et al.* in the 18th judicial district court of said State for Acadia parish, respectfully shows to the court :—

That he has filed his appeal bond in said district court for an appeal to your honorable court, and the district court has rendered an order granting said appeal making the same returnable to your said court on the 3rd Monday of November, 1901, and the clerk of said court has failed to complete the transcript of appeal, and may fail to complete the same in time for said return day.

That in order to save said appeal it is likely that an order extending the return day thereof will be necessary, and

Therefore, it is suggested to the court that the return day of said appeal be extended to the 25th day of November to enable the clerk of said district court to complete the transcript of appeal,—for which order appellant respectfully prays.

(Signed) By his attorney, EDW. L. WELLS.

(Endorsed :) No. 14216. Supreme court. F. M. Joplin *vs.* T. C. Chachere. Application for time. Filed November 11th, 1901. (Signed) T. McC. Hyman, clerk.

Motion and Affidavit Made Part of the Foregoing Motion.

F. M. JOPLIN
vs.
T. C. CHACHERE ET AL.

129 To the honorable supreme court :

Plaintiff and appellant in above styled suit respectfully avers : That he is in receipt of a letter from the clerk of the 18th judicial district court for Acadia parish, addressed to his undersigned

counsel, in which it is stated that on account of said court being in session at Crowley, he has been unable to complete the transcript of appeal in said suit up to the time of writing, but will complete it in time for the return day to-wit the 18th instant.

Now plaintiff and appellant avers that he verily fears that said transcript will not be completed in such time, or will not reach your honorable court in time, as this is now the 13th of the month, and no transcript has been furnished or offered to his undersigned attorney, only 5 days remaining for its receipt and transmission to your honorable court and the margin is too small.

That plaintiff's appeal may be lost on account of the laches of the said clerk of court, for which he may be blamed.

He, therefore, prays your honorable court to extend the return day of said appeal for another week in order to insure its being lodged in said supreme court in time, annexing hereto said letter and the affidavit of his said attorney, plaintiff being not present to make it.

(Signed) By his attorney, EDW. L. WELLS.

STATE OF LOUISIANA, }
Parish of Vernon. }

Before me, the undersigned authority, personally appeared Edward L. Wells, attorney-at-law, who being duly sworn, says: That all the facts and allegations in above application are true.

(Signed) EDW. L. WELLS.

Sworn to and subscribed at Leesville, La., Nov. 13, 1901.

[SEAL.] (Signed) J. J. HICKS, *Clerk.*

(Endorsed:) Rec'd Nov'r 15, 1901.

130 *Transcript of Appeal Filed.*

Supreme Court of Louisiana.

F. M. JOPLIN
vs.
T. C. CHACHERE ET AL. } No. 14216.

Filed Nov. 18th, 1901.
(Signed) PAUL E. MORTIMER,
Deputy Clerk.

Motion and Order to Extend Return Day.

(Extract from the Minutes.)

NEW ORLEANS, MONDAY, *November* 18*th*, 1901.

The court was duly opened, pursuant to adjournment.
Present their honors: Francis T. Nicholls, chief justice, Joseph A. Breaux, Newton C. Blanchard, Frank A. Monroe, Olivier O. Provosty, associate justices.

F. M. JOPLIN
vs.
T. C. CHACHERE. } No. 14216.

On motion of Edward L. Wells, Esq., of counsel for plaintiff and appellant, and the affidavit on file being considered, it is ordered by the court that the return day for filing the transcript of appeal herein in this court be extended for seven days from the eighteenth day of November, A. D. 1901.

Answer to Appeal.

Supreme Court of La.

FERDINAND M. JOPLIN
vs.
T. C. CHACHERE ET AL. } No. 14216.

Now into this honorable court come the defendants and for answer to the citation of appeal herein filed, say that the judgment
131 of the lower court is correct and as such it should be affirmed with costs in both courts and for general relief.

(Signed) By their att'ys, GILBERT L. DUPRE.
Do. W. C. PERRAULT.
Do. WM. J. SANDOZ.

(Endorsed:) No. 14216 Supreme court of La. F. M. Joplin *vs.* T. C. Chachere *et als.* Answer to appeal. Filed Febr'y 19, 1902. (Signed) Paul E. Mortimer dep. clerk.

Continuance.

(Extract from the Minutes.)

NEW ORLEANS, WEDNESDAY, *February* 19*th*, 1902.

The court was duly opened, pursuant to adjournment.
Present their honors: Francis T. Nicholls, chief justice. Joseph

A. Breaux, Newton C. Blanchard, Frank A. Monroe, associate justices. Absent: Olivier O. Provosty, associate justice.

F. M. JOPLIN
vs.
T. C. CHACHERE ET AL. } No. 14216.

This case was ordered by the court to be continued until to-morrow morning at 11 o'clock.

Continuance.

(Extract from the Minutes.)

NEW ORLEANS, THURSDAY, *February 20th*, 1902.

The court was duly opened, pursuant to adjournment.
Present their honors: Francis T. Nicholls, chief justice, Joseph A. Breaux, Newton C. Blanchard, Frank A. Monroe, Olivier O. Provosty, associate justices.

F. M. JOPLIN
vs.
T. C. CHACHERE ET AL. } No. 14216.

132 This case was ordered by the court to be continued until to-morrow, Friday, the 21st instant.

Continuance.

(Extract from the Minutes.)

NEW ORLEANS, FRIDAY, *February 21st*, 1902.

The court was duly opened, pursuant to adjournment.
Present their honors: Francis T. Nicholls, chief justice. Joseph A. Breaux, Newton C. Blanchard, Frank A. Monroe, Olivier O. Provosty, associate justices.

F. M. JOPLIN
vs.
T. C. CHACHERE ET AL. } No. 14216.

This case was ordered by the court to be continued with preference.

Continuance.

(Extract from the Minutes.)

NEW ORLEANS, WEDNESDAY, *March 19th*, 1902.

The court was duly opened, pursuant to adjournment.
Present their honors: Francis T. Nicholls, chief justice, Joseph A.

Breaux, Newton C. Blanchard, Frank A. Monroe, Olivier O. Provosty, associate justices.

F. M. JOPLIN
vs.
T. C. CHACHERE ET AL. } No. 14216.

This case was ordered by the court to be continued until to-morrow, Thursday, the 20th, instant.

Cause Heard and Submitted.

(Extract from the Minutes.)

133 NEW ORLEANS, THURSDAY, *March 20th*, 1902.

The court was duly opened, pursuant to adjournment.

Present their honors: Francis T. Nicholls, chief justice, Joseph A. Breaux, Newton C. Blanchard, Frank A. Monroe, Olivier O. Provosty, associate justices.

F. M. JOPLIN
vs.
T. C. CHACHERE ET AL. } No. 14216.

This cause came on this day to be heard and was argued by counsel. Mr. Charles J. Boatner opened for the plaintiff, appellant; Mr. Gilbert L. Dupre replied on behalf of the defendants, appellees; and Mr. Boatner closed the argument. The court then took the cause under advisement upon the briefs for both parties and the papers now on file.

Opinion of the Court.

UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

NEW ORLEANS, MONDAY, *March 31st*, 1902.

The court was duly opened, pursuant to adjournment.

Present their honors: Francis T. Nicholls, chief justice. Joseph A. Breaux, Newton C. Blanchard, Frank A. Monroe, Olivier O. Provosty, associate justices.

His honor, the chief justice pronounced the opinion and judgment of the court in the following case:—

F. M. JOPLIN
vs.
T. C. CHACHERE ET AL. } No. 14216.

Appeal from the 18th judicial district court, parish of Acadia.

Statement of the Case.

The plaintiff's prayer in this action is that he be decreed to be the owner of the property which he describes in his petition.

134 The defendants are Theodore C. Chachere and John P. Boagni, who are alleged to be "trespassing upon said land and claiming to own and be in possession of same by pretended titles, originating prior to the issuance of the patent from the United States, but not from Bennet Joplin in whose name the patent issued, nor from his heirs or heir."

He alleges that he is the owner of the land by purchase from James H. Houston, Jr., who purchased from the only surviving heir of Bennet Joplin, deceased. That the United States, on July 16th, 1900, issued its patent, confirming to Bennet Joplin, and his heirs, title to said land; that said land was acquired under and by virtue of an act of Congress approved March 3rd, 1807, and predicated upon the treaties of the United States of America.

He introduced in support of his title, first: an act dated the 22nd day of June, 1900, executed by James H. Houston, declaring himself to be the agent and attorney in fact of James H. Houston, Jr., by which the latter, through said agent, sold to the plaintiff for the price of five hundred dollars (without warranty, the purchaser taking the title as it was with a tax title against it) all his rights, claims, title and ownership in and to the land which plaintiff claims in this litigation. In this act it is recited that the land was the same land acquired by the vendor from J. W. Joplin, by act passed before William J. Sandoz, notary public, on June 15th, 1895, and duly recorded.

2nd. An act *sous seing prive* dated *18th of June, 1895*, between James W. Joplin and James H. Houston, Jr., acknowledged on the same day before John H. Wells, clerk of the court of Hardin county, State of Kentucky, which act was declared on the 24th of June, 1895, by W. J. Sandoz, notary public, to have been produced before him, and the signature of James H. Houston, Jr., to said act duly acknowledged to be his signature in the presence of the witnesses thereto.

In this act James W. Joplin declares that he sells and conveys, with full warranty to James H. Houston, Jr., "all his rights and titles, interest and demands, in and to a certain tract of land situated in the parish of Acadia, State of Louisiana, containing eight hundred and ninety eight and ninety eight hundredths acres

135 more or less (Spanish grant) No. 41 township seven (7) south range (1) one, east. (See parish map and a list of private

land claims where above described property is well defined as belonging to Bennet Joplin)." The price of the sale was fifty dollars.

3rd. A patent from the United States dated July 16th, 1900, in favor of Bennet Joplin, his heirs and assigns. The patent recites that it was granted in accordance with the provisions of the act of Congress of the third of March, one thousand eight hundred and seven. It declares that there had been deposited in the General Land Office of the United States a patent certificate numbered fourteen hundred and ninety nine, issued by the register and receiver of the United States Land Office, on the 25th of May, one thousand nine hundred, whereby it appeared that the private claim of Bennet Joplin being number one thousand nine hundred and twenty-seven, class B, in the report of the old board of commissioners for the western district of the Territory of Orleans, was confirmed by the said commissioners under the authority conferred upon them by the act of Congress approved on the 3rd of March, 1807, entitled "An act respecting claims to land in the Territories of Orleans and Louisiana; that the claim had been regularly surveyed and designated as section forty-nine in township seven, south of range one, west, and section forty-one, in township seven, south of range one, east, of the Louisiana meridian, in the southwestern district of Louisiana, containing eight hundred and seventy acres, and six hundredths of an acre as appeared by a plat and descriptive notes on file (in the General Land Office) thereof, duly examined and approved by James Lewis, surveyor general for Louisiana, on the 9th day of May, one thousand nine hundred; that this plat and descriptive notes were inserted and made — of the patent.

The plat and descriptive notes referred to were signed as recited, by James Lewis, surveyor general of Louisiana on the ninth of May, 1900.

Immediately following the plat the surveyor general recites that it represents the survey of the private land claim of Bennet Joplin confirmed by the old board of commissioners for the western district of Louisiana in pursuance of authority conferred upon
136 them by the 4th section of the act of Congress approved March 3rd, 1807, entitled "An act respecting claims to lands in the Territories of Orleans and Louisiana as appeared by their confirmation certificate No. B, 1927, dated March 11th, 1802. After making this recital, the surveyor general says: "The following being a description of the survey taken from the approved field notes of N. B. Phelps, deputy surveyor." He then gives the field notes of the survey.

At the end of the document, under date of May 9th, 1900, are the words "examined and approved" followed by the signature of the surveyor general.

Boagni answered, pleading first the general issue. He then averred that he had, by authentic act recorded in the parish of Acadia, on July 24th, 1900, purchased from Victor C. Sitting, in good faith, and for a valuable consideration, a tract of woodland

situated in the parish of Acadia, containing five hundred acres, more or less, being part of section 41, township 7, south, range 1, confirmed to Bennet Joplin, by certificate B. No. 1927, bounded north by T. C. Chachere, south by heirs of J. C. Brooks, east by Bayou Mallet, and west by E. Veltin and Wm. Johnson, Spanish grant, acquired by his vendor at tax sale, made September 30th, 1871, recorded in St. Landry parish, and duly confirmed by the auditor of public accounts on the 19th of May, 1874. That since the purchase of this land in 1871, his vendor had been in uninterrupted and continuous possession, and in good faith of said tract, peaceably possessing the same. That he pleaded in bar of plaintiff's action the prescription of three, four, five, ten, twenty and thirty years: that the sale was made with full warranty of title, and he was entitled to have his vendor cited in warranty to defend the title, and he so prayed. In the event of eviction he prayed for a judgment for the restitution of the price and for the fruits and revenues he might be obliged to return to plaintiff; for costs and for all damages which he might suffer by reason of plaintiff's action. Chachere answered, pleading first, the general issue.

Further answering, he averred that on the 29th of May, 1882, he purchased in good faith and for a valuable consideration from Victor C. Sitting, by authentic act, duly recorded in the parish of St. Landry, the property which he described containing four hundred and
137 thirty-five acres more or less, being part of the land purchased at tax sale, made by D. C. Sitting, tax collector, in 1871, said land being in section 41, T. 7, S. R. 1. E.; that he had in good faith, uninterrupted, peaceable and actual possession of the same since the date of his purchase; that since the date of his purchase he had paid the taxes thereon at the rate of thirty dollars per year; that he had enclosed the same by a fence worth $750, and made improvements which he recited; that he pleaded in bar of plaintiff's action the prescription of 3, 4, 5, 10 and 20 years. In the event he be not sustained in his defence, he prayed that if there should be a decree divesting him of his property, that before he be made to surrender the property, plaintiff reimburse him the amount of taxes he had paid, and the full value of the improvements he had placed upon the property.

Victor Sitting called in warranty, answered the call in warranty, on the 20th September, 1901. He pleaded the general issue. Further answering, he averred that he had on the 30th of September, 1871, at a tax sale made in accordance with law, bought certain property which he described, at that time in the parish of St. Landry; that he took possession of the land immediately after purchasing the same, and continued in good faith and uninterruptedly and peaceably until May 29th, 1882, when he sold one half of said land for a valuable consideration to Theodore C. Chachere; that from that date he continued in possession of the other half in good faith and uninterruptedly and peaceably up to the time that he sold the same to John P. Boagni, on July 24th, 1900; that his title was duly recorded in the parish of St. Landry, and the tax sale made to him by the

tax-collector was duly ratified by the State auditor, and his ratification duly recorded in St. Landry, on June 13th, 1874; that he had paid taxes on the property while in his possession of six hundred dollars. He pleaded in bar of plaintiff's action the prescription of 3, 4, 5, 10 and 20 years.

In the event his title should be set aside, his plea of prescription not sustained, he prayed in reconvention, and alternatively, for judgment against plaintiff for six hundred dollars, and that payment of same be made before plaintiff should be permitted to take possession.

The district court rendered judgment, decreeing that the claim of the plaintiff be rejected at his costs; that the plea of prescrip-
138 tion set up by the defendant be sustained, and that they be quieted in their possession of the land described in plaintiff's petition.

The plaintiff individually and as administrator of the succession of Bennet Joplin, appealed.

Opinion.

The plaintiff urges that the defendants are trespassers upon the land and this claim is based upon the theory that until July 1900, at which date the United States Government issued a patent in favor of Bennet Joplin, his heirs or assigns, the property in question was the property of the United States.

We do not think there is any dispute between the parties as to the fact that, on the 12th of March, 1812, the board of commissioners appointed under section four of the act of Congress, approved March 3rd, 1807, confirmed to Bennet Joplin under certificate No. 1927, by virtue of occupancy and settlement under Joseph Chevalier Poiret, nine hundred and thirteen and ninety eight-hundredths acres of land in Bayou Mallet woods in the county of Opelousas; that on April 29th, 1816, Congress reciting the various acts bearing upon the subject (act of March 10th, 1812, act of February 27th, 1813 and act of April, 1814) passed an act for the confirmation of certain land claims in the western district of the State of Louisiana, and that under section 4 of that act it was enacted "that the claims marked "B," described in the reports of the commissioners for the western district of the State of Louisiana, formerly Territory of Orleans, and recommended by them for confirmation, be and the same are hereby confirmed;" that the claim of Bennet Joplin, covered by certificate No. 1927 of the board of commissioners was confirmed in favor of Joplin by that act of Congress; that although the claim was so confirmed by act of Congress no patent was issued for the land by the United States Government until July, 1900.

It is contended on behalf of the plaintiff that until this patent was issued the ownership of the land and the title thereto was in the Government of the United States; that the resulting effect of this fact was that no rights of ownership to third parties could be based

or predicated upon Jeplin's having any ownership or title to
139 this property prior to the issuance of the patent nor could any obligations which Joplin may have come under either to individuals or the State strike this land or be enforced upon it until a patent for the same had issued. The defendants deny the correctness of this proposition.

The defendants maintain that not only was the claim confirmed by act of Congress but the land was surveyed and officially located as far back as 1856, under a survey and field notes which had been submitted to and approved by the then surveyor general of the United States for the State of Louisiana.

The plaintiff does not deny that as a fact this was the case, but he insists that the evidence in the record does not disclose the date of the survey of the claim made by Phelps, or of any approval of his survey and field notes by a surveyor general of the State, prior to James Lewis' approval, in 1900, and they maintain that even if such survey had been made and approved by the surveyor general, the survey and approval were inoperative and of no virtue and effect until acted upon in the form of a patent. The following points are made in the syllabus of plaintiff's brief.

1. A patent is the highest evidence of the divestiture of title of the Government, and one relying upon prescription accruing before the issuance of such patent, must show a prior divestiture, or his plea cannot be maintained. 12th Annual, 151.

2. Until the patent issues, prescription does not run against the Government and its grantees. Gibson *vs.* Chouteau, 13 Wallace, 92, Burgess *vs.* Gray, 16 Howard, 48, Oaksmith *vs.* Johnson, 92 U. S. 343, Meguire *vs.* Tyler, 8 Wallace, 650, Sparks *vs.* Pierce, 115 U. S. 408, 113 U. S. 271, 47th Ann. 579, 132 U. S. 239.

3. Private land claims in the Territory of Louisiana, which had not ripened into complete grants before the cession, required survey, confirmation by the board of commissioners, the approval of the Secretary of the Treasury, confirmation by act of Congress and patent. Such survey should be made under the directions of the surveyor general and be approved by him in order to segregate
140 private land from the public domain. 47th Annual, 579, 13th Ann. 390, 12 A. 151, 10 A. 133, 9 A. 154, 438, 5 A. 75, 558, 4th Ann. 99, 3rd Ann. 86, 5th N. S. 35, 132 U. S. 239, 16 Howard, 48, 3, 787, 15 Peters, 75, 184, 215, 319, 16 Peters, 159, 21 Wallace 521, 4 Sawyer, 536, 3 Sawyer 66, 16 Wallace, (Dent *vs.* Emmeger) 308.

4. Where such incomplete grants have not been identified and determined to cover a definite location, or are subject to conflicting rights, the land is not liable to taxation. Am. & Eng. Ency. of Law, vol. 25, page 111, and authorities there cited, 95 U. S. 259, Colo. Co. *vs.* Com'rs.

5. A tax sale of property belonging to a person, notoriously dead long years before the assessment, is null. Stafford's case, 33 Ann. 520.

6. A tax sale which neither recites the assessment, nor any of the

formalities required by law, and unaidded by proof *aliunde* as to its correctness is absolutely null and void. Rapp vs. Lowry, 35th Ann. 1275; Lambert vs. Craig, 45 Ann. 1109.

Defendants' counsel submit to the court the following propositions and authorities.

1. The rights of a State to tax lands which have, or may have, belonged to the United States does not depend on the actual issuance of a patent, but on the complete and perfect right of the claimant to demand one. Saunders on Taxation, page 40, 3 Howard (U. S.), page 440, Carroll vs. Safford; Railroad Co. vs. Prescott, 16 Wall, 603; Railroad Co. vs. McShane, 22 Wall., 444, Simien vs. Perrodin, 35th Ann. 931, 4th Ann. 137; A. & E. Ency. of Law, vol. 19, pages 332–333 and 334; Cooley on Taxation, pages 59 and 60.

It is at this stage (when the right to demand a patent has been vested in the purchaser or claimant) that the land ceases to be the property of the United States and becomes that of the pre-emptor or claimant to such an extent, that it is liable to taxation by the State in which it lies. A. and E. Ency. of Law, vol. 19, foot notes, page 334.

Where the rights to a patent has once become vested in a purchaser of public land, it is equal so far as the Government is concerned to a patent actually issued. The execution and delivery of the patent after the right to it has become complete, are the mere ministerial acts of the officers charged with that duty. Barney vs. Dolphe, 97 U. S. 652; Starks vs. Starrs, 6 Wall., U. S. 402. The patent is but evidence of a grant, and the officer who issues
141 it acts ministerially and not judicially. Moran vs. Horsky, p. 212 of the opinion. 178 U. S. Confirmation of Grants by Congress.

A legislative confirmation of a claim to land is a recognition of the validity of such a claim, and operates as effectually as a grant or a quit claim from the Government. A patent issued thereunder adds nothing to the force of the confirmation. It is merely documentary evidence, having the dignity of a record of the existence of the confirmed title. Langdeau vs. Whitney, 88 U. S. 521; Morrow vs. Whitney, 95 U. S. 551; Whitney vs. Morrow, 112 U. S. 693.

If a survey of the land is required the title becomes perfect as soon as made. 88 U. S. 531.

The surveyor general in each State is required to cause to be surveyed all private land claims within his district after they have been confirmed by authority of Congress. R. S. of the U. S., sec. 2223.

A survey having been made in this case by Noah H. Phelps, U. S. deputy surveyor, the presumption is it was made in pursuance of the above requirement, and this presumption is conclusive until overcome by proof to the contrary. A. & E. Ency. of Law, vol. 19, p. 49, first edition, Stephen's Digest of the Law of Evidence, article 101 and authorities quoted in the brief; 35 Ann. 1038, Cole vs. Thompson,—Peters, 118, 34 U. S.

In passing upon the questions raised in this case, it will be seen

at once that there is no issue between the parties based upon a claim that loss or injury had been occasioned by the Joplin claim having been left after its confirmation by the board and the action by Congress upon the confirmation, in an uncertain condition as to its location. No conflict of interests has arisen between different parties by reason of the non issuing of a patent. All parties admit that Bennet Joplin was entitled to the confirmation of his claim both from the board of commissioners and from Congress, and none of the parties contest, but all admit, that the location of the claim as shown by the survey and field notes attached to and made the basis of the patent is correct. Defendants admit the original ownership of Bennet Joplin to this land. Neither the United States Government, nor any one claiming under it ad-
142 versely to the Joplin confirmation in regard to the land now in controversy is before the court. It is not claimed that there ever has been any adverse claim to it as a whole though there was at one time a conflict as to a part of the land, other than that involved herein between the Joplin claim and that of one or two other claimants. The conflict did not extend to any portion of the land now in litigation. The board of commissioners was not called upon in dealing with Bennet Joplin's claims to act upon a mere "floating" right held by Bennet Joplin entitling him generally to locate land, such a right for instance as he would have had had he been the owner of land script entitling him to locate so many given acres of land as he might afterwards select at his pleasure or by agreement between himself and the board of commissioners. What they had presented then was a right or privilege claimed to be already existing upon certain specific property in favor of Bennet Joplin, and under and by reason of the original occupancy and settlement thereon of Joseph Chevalier Poiret, continued we presume by Joplin as Poiret's assignee. The evidence which Joplin introduced before the board in support of his claims is not before us, but unquestionably there was proof before it justifying its confirmation. The certificate which was issued in this matter by the board of commissioners was, in form, as follows:

No.	Date.	Name of person under whom land was claimed.	In whose favor issued.	Nature of claim.	Situation of land.		Number of acres & hundredths.	Arpents & hundredths in front.
					County.	Water course.		
B1927	March 11	Joseph Chevalier Poiret.	Bennet Joplin.	Occupancy 10 years.	Opelousas	Mallet's woods.	918.98	169

It is evident that Poiret was shown to the board to have already occupied and settled a particular body — land for the time stated and to have already had an existing right or privilege to a particular tract. The identity of the tract confirmed must have been fixed by evidence before the board and the survey which followed was unquestionably based upon that evidence preserved and made known to

the surveyor. The Joplin claim under Poiret was not based
143 upon the survey, but the survey was based upon the existing claim, and simply identified the land to which Poiret and Joplin were entitled by antecedent occupancy and settlement. The rights of Poiret and Joplin did not originate in the action of the board of commissioners and that of Congress. Their action was simply recognitive and declaratory as the word confirmed used in connection with it plainly shows. The Government practically and substantially never claimed this land as belonging to it and as forming part of the public domain. The confirmation was in the nature of a quit claim or relinquishment by the Government of any right or interest in the land claimed. The title of Poiret and Joplin under him was a title other and different from one which would have been held by either under a conditional sale to them of a part of the public domain under a homestead or similar right, where the title was to remain in the Government until everything had been done by the vendee or transferree which the Government exacted from him as a condition of obtaining ownership. In such cases the patent and the right of ownership of the land described in it were merged in each other became as it were, one and the same, but in the case of a confirmed title, there was no such merger. The right which was confirmed continued throughout, separate and distinct and antedating completely the patent which evidenced not the right, but authentic evidence of the recognition of the right by the Government.

Neither Joplin nor his heirs could disconnect themselves so far as they were concerned from their claim of ownership of this land under Poiret's rights in order, for their private purposes, to refer the origin of their right of ownership to the patent which the Government issued recognizing their right *ab initio*. The plaintiff here is contesting the already acquired rights of their own asserted author. Joplin and his heirs became the absolute owners of the land which was occupied and settled by Poiret prior to the confirmation against the Government itself, and every one under it from the date of confirmation by Congress. In case any contest should arise prior to the issuing of the patent the matter would have to be determined by the introduction simply of evidence. The confirmee could call
144 for a Government survey if one had not already been made and sustain his rights under the confirmation upon such survey independently of a patent. If however a survey of the claim was necessary in order to complete the transfer of ownership of this property to Joplin, we are satisfied that a survey of the same was made and approved by the surveyor general, W. J. McCulloh as far back as 1856. The present surveyor general of Louisiana refers to the survey and field notes of Phelps as having been approved, but not as a matter of original approval by himself as the plaintiff seems to contend. In the act of sale of this land under which the plaintiff claims from James W. Joplin to James H. Houston Jr. the land transferred is referred to as a "Spanish grant" with the added words (see parish map and a list of private land claims where the above

described property is well defined as belonging to Bennet Joplin). We have before us a copy of the parish map here referred to with the different private claims (among others that of Bennet Joplin) distinctly set out and the surveys on which they were located minutely detailed certified to as far back as 1856 by the surveyor general. It may be that it is not strictly and technically in evidence but it is before us by reference in one of the acts and were we not to act upon it the only effect would be to remand uselessly the case in order to have it formally introduced.

This sale of the property from James W. Joplin to Samuel H. Houston Jr., was made on the 18th of May, 1895, antedating by several years the issuing of the patent which the plaintiff now insists was essentially necessary to convey title either to Bennet Joplin or his heirs. Plaintif- claims by purchase. If James W. Joplin had any rights in this property they were not original, but derivative rights, derived through and under the confirmation of Bennet Joplin. We are of the opinion that the property in question became the property of Bennet Joplin from the moment his claim was confirmed by act of Congress and became subject from that time, in his favor, to full rights of ownership, and that it became subject also from that time to all the obligations which are incidental to property held in private ownership by individuals—among other obligations to that of State taxation.

We are informed by the record that the property was sold in 1871 to Victor Sittig in enforcement of State taxes assessed upon it in the name of Bennet Joplin and that the sale made was confirmed
145 by the State auditor in 1874 and that that act of confirmation was placed of record at that time in the parish of St. Landry; that the tax purchaser Sittig and his vendees Chachere and Boagni have had actual corporeal possession of the property ever since 1871, the defendant Chachere holding title to a portion of the property by purchase on the 29th of May, 1882, and the defendant Boagni to the balance of the property by purchase on the 24th of July, 1900. The defendants have set up their respective titles and pleaded in bar of plaintiff's action the prescription of three, four, five, ten and twenty years.

The plaintiff urges that a tax sale of property which belonged to a person notoriously dead long years before the assessment is null and in support of this contention he cites Stafford's case, 33 Ann., 520, and further that a tax deed which neither recites the assessment nor any of the formalities required by law, and unaided by proof *aliunde* as to its correctness is absolutely null, and in support of this proposition, he cites Rapp *vs.* Lowry, 35 Ann., 1275, and Lambert *vs.* Craig, 45th Ann., 1105.

The plaintiff did not attack by direct action the tax sale made of this property in 1871 under which the defendants have held actual corporeal possession since that time. He ignored that sale altogether and brought a petitory action for the property. He filed no pleadings after the defendants had set up the tax sale of 1874 as the original source of their title, nor did he introduce evidence to break the

force and effect of a tax deed. The fact of Bennet Joplin's death was accidentally brought out as having occurred many years ago, in connection with the administration of his succession, and his title to the property. The plaintiff testified that he himself was fifty-three years of age, that he knew nothingof Bennet Joplin except by reputation, that he died long before the witness could remember. The plaintiff, upon a collateral attack, which he makes upon a tax sale nearly thirty years after it took place relies upon its being held to be absolutely null and void by reason of the insufficiency of the recitals of the tax deed in respect to the observance of the legal formalities preceding the sale. Plaintiff is correct in his statement that upon a number of occasions we have declared that an assess-
146 ment made in the name of a dead person is improperly made and carries with it the nullity of a tax sale based upon it, but that rule has its limitations and we do not think it can or should be applied in this case. It is a latent defect which the tax purchaser is not bound to ascertain or know. It is not one whose actual existence cuts him off from invoking good faith as a basis for the prescription of ten years *acquirendi causa*.

We have just held that the property in question was in Bennet Joplin from the time of its confirmation by Congress, if not before. That from that time it became subject to State taxation. All property in the State independently of the question as to who is the owner of the particular property, is subjected to taxation and to expropriation for the purpose of carrying on the State government though the State recognizes the individual rights of parties in property and has sought to prevent their divestiture in various ways.

It has enacted laws by which an assessment of property for purposes of taxation should be made annually commencing and closing at a certain fixed date. It has fixed the date of the delinquency of taxes and the time and place of tax sales. It has sought to give notice to parties interested in particular property by placing the names of such parties in connection therewith as far as they could be ascertained upon the assessment rolls, and in the proceedings connected with the tax sales, but it has cast upon owners the affirmative duty and obligation of making themselves known by furnishing assessment estimates of their property to the State officials. Now neither Bennett Joplin nor any one claiming rights upon this property have ever (so far as the record shows) paid a dollar of taxes upon it, made any returns for assessment purposes or advanced any right or claim of ownership to it since the confirmation of title. Bennet Joplin, we are informed by the record was a soldier in the revolutionary war, and necessarily died many years ago. He and his heirs entirely disappeared. Their residence, even their existence, was unknown, but it did not follow from this fact that the property in Louisiana was not subject to assessment for and liability to sale for taxes. The law expressly provides for the assessment and sale of property of unknown owners and the assessment and sale of this property as
147 property of an unknown owner would have passed the title. The parties concerned would under such circumstances have

received by mere description of the property itself no warning whatever of their interest in the subject matter. They certainly have no real equitable reason to complain that the name of the original owner as shown by the record should have been made to appear in the proceedings. If the assessment and sale of the property as belonging to an unknown owner would have conveyed the title, plaintiff cannot urge now adversely to the proceedings the placing therein of the name of the original owner, a fact calculated to call the special and direct attention of the Joplin family to the matter. We think the case is covered by that of Webre *vs.* Lutcher and Moore, 45th Ann., 574 and Michel *vs.* Stream, 48th Ann. 341. Plaintiff is seeking to enforce a neglected and apparently an abandoned right to the ownership and possession of property to the prejudice of parties who have been in possession of it nearly long enough to have acquired ownership of the same without any title whatever.

These particular parties however hold in good faith under titles derived originally through official proceedings taken out by State officers in the enforcement of the State's rights. They are not trespassers as the plaintiff alleges them to be, nor were they originally trespassers. The mere conclusion of law to that effect announced by the plaintiff is backed by no fact. The mere failure of the tax collector to make in his deed recitals of fact which it would have been proper for him to have made does not render *ipso facto* the tax sale to which it refers, absolutely null and void nor destroy the good faith of the purchaser at the tax sale in taking possession of and holding the property as owner under it. (Welsh *vs.* Augusti, 52 Ann. 1955.) The failure of proper recitals in a tax deed may bring about very serious trouble under some conditions and circumstances but it does not carry under the circumstances of this case the legal results which the plaintiff contends for. In Michel *vs.* Stream this court said: "It will be seen that the code recognizes the existence of an abandonment as it were of the right of even the right of constructive or civil possession resulting from ownership not necessarily working an abandonment of ownership, but possibly modifying and affecting very materially the rights of the owner
148 though ownership may be retained and the possession resumed. This condition of affairs, if rights or claims of third parties under color of title should have intervened, may be attended with serious (sometimes insurmountable) difficulties.

So long as the owner of property holds it in actual possession he occupies a position of great advantage as against adverse claims advanced against him. As he loses his grasp upon the possession he surrenders this vantage ground and when in order to retake his own he should be forced to have recourse to judicial proceedings, he may find himself successfully met by pretensions which originally would have been held utterly without foundation or merit. Prescription *acquirendi causa or liberendi causa* may cut off the enforcement of his rights."

This is precisely what has happened here. The plaintiff occupies *quoad* the State and the parties holding under the State's title the

status of an unknown owner, re-appearing to assert neglected abandoned rights to the prejudice of parties holding titles acquired from the State in good faith and holding actual possession under them for nearly thirty years. Plaintiff's claim is without equity. They can not oust the defendants from property which they have bought, paid for and improved while they have stood in the back ground until values have risen to which they have contributed nothing. 145 U. S., 317; 45 U. S., 368; 178 U. S., 208.

We think the judgment is correct and it is hereby affirmed.

MONROE, J.: I concur in the decree.

Final Judgment and Opinion.

(Extract from the Minutes.)

NEW ORLEANS, MONDAY, *March 31st*, 1902.

The court was duly opened, pursuant to adjournment.

Present their honors: Francis T. Nicholls, chief justice. Joseph A. Breaux, Newton C. Blanchard, Frank A. Monroe, Oliver O. Provosty, associate justices.

His honor, the chief justice pronounced the opinion and judgment of the court in the following case:

149 F. M. JOPLIN *vs.* T. C. CHACHERE. } No. 14216.

Appeal from the eighteenth judicial district court for the parish of Acadia.

We think the judgment is correct and it is hereby affirmed.

Monroe, J. concurs in the decree.

Petition for Rehearing.

Supreme Court of Louisiana.

FERDINAND M. JOPLIN *vs.* T. C. CHACHERE ET AL. } No. 14216.

To the honorable chief justice and associate justices of said court:

Now comes the plaintiff and appellant, through his undersigned attorneys, and prays the court to grant him a rehearing and reversal of the decree herein pronounced, for the following reasons:

First. The court erred in holding that the confirmation of the

Joplin claim by Congress was itself a complete investiture of title in the claimant.

Second. The court erred in holding that the lands covered by the grant were segregated from the public domain of the United States by survey before approval thereof, by the surveyor general thereof.

Third. The court erred in receiving and considering a township map which had not been offered in evidence, which was not attached to the record, which appellant has had no opportunity to examine, and which had not, as he believes, been approved by the surveyor general.

Fourth. The court erred in holding the lands subject to State taxation before the issuance of the patent therefor by the United States, and before the conflicting claims upon the same, shown by the record to have existed, were settled by the action of the officers of the United States; because, until such conflict was determined it could not be known who was entitled to the lands in controversy herein, and such taxation is in violation of the Constitution and laws of the United States.

Fifth. The court erred in giving precedence to a title originating from the State of Louisiana over a patent and title originating under the authority of the United States, also contrary to the laws of the United States.

(Signed) EDW. L. WELLS,
Attorney for Plaintiff, Appellant.
BOATNER, DODDS & BOATNER,
Of Counsel.

(Endorsed:) No. 14216 Supreme court of Louisiana. F. M. Joplin *vs.* T. C. Chachere *et al.* Application for rehearing. Filed April 11, 1902. (Signed) T. McC. Hyman, clerk.

Rehearing Refused.

(Extract from the Minutes.)

NEW ORLEANS, MONDAY, *April 28th*, 1902.

The court was duly opened pursuant to adjournment.

Present their honors: Francis T. Nichols, chief justice, Joseph A. Breaux, Newton C. Blanchard, Frank A. Monroe, Olivier O. Provosty, associate justices.

F. M. JOPLIN
vs.
T. C. CHACHERE ET ALS. } No. 14216.

It is ordered that the rehearing applied for in this case be refused

Petition for Writ of Error.

In the Supreme Court of Louisiana.

F. M. JOPLIN
vs.
T. C. CHACHERE ET AL. } No. 14216.

151 To the honorable the chief justice of the supreme court of Louisiana, or to the honorable the Chief Justice or any associate justice of the Supreme Court of the United States:

The petition of Ferdinand M. Joplin, individually and as administrator of the succession of Bennet Joplin, deceased respectfully represents:

That in the above entitled cause, then pending therein on appeal from the eighteenth judicial district court for the parish of Acadia, wherein petitioner was appellant, the supreme court of Louisiana did on the 31st day of March, 1902, render a decree against petitioner in a certain cause wherein petitioner was plaintiff and Theodore C. Chachere and John P. Boagni were defendants, and Victor C. Sittig was called in warranty by said Boagni, by which said decree it was adjudged that the judgment appealed from be affirmed, and that the asserted claim of petitioner to the lands described in his original petition be rejected, and that the said defendants be quieted in their title and possession, each for his portion, of said lands.

That thereafter, and in due time, your petitioner filed in the said supreme court of Louisiana a petition for a rehearing of the said cause, in which he alleged in substance: 1. That the said court erred in holding that the confirmation of the Joplin claim by Congress was itself a complete investiture of title in the claimant; 2. That the court erred in holding that the lands covered by the grant were segregated from the public domain of the United States by survey, before approval thereof by the surveyor general; 3. That the court erred in receiving and considering a township map which had not been offered in evidence, which was not attached to the record, which appellant had no opportunity to examine, and which had not, as he believes, been approved by the surveyor general; 4. That the court erred in holding the lands subject to State taxation before the issuance of the patent therefor by the United States, and before the conflicting claims upon the same, shown by the record to have existed, were settled by the action of the officers of the United States, because, until such conflict was settled, it could not be known who was entitled to the lands in controversy herein; and such taxation is in violation of the Constitution and laws of the United
152 States; 5. The court erred in giving precedence to a title originating from the State of Louisiana over a patent and title

originating under the authority of the United States, and that the laws of the United States were thereby violated.

That the said petition for a rehearing was by the said court considered, and on the 28th day of April, 1902, was overruled and denied; whereupon the judgment of the said supreme court of Louisiana, which is the highest court of said State in which a decision of said cause can be had, became and is final.

Your petitioner shows that he is aggrieved by the said judgment and by the proceedings had in said suit; and that by said judgment, and by the proceedings had prior thereto, errors were committed to the prejudice of petitioner, in this: That there was in said suit drawn in question the validity of a statute of, or an authority exercised under the United States, and the decision in said suit was against the validity thereof; that there was drawn in question the validity of a statute or a constitution of, or an authority exercised under the State of Louisiana, on the ground of their being repugnant to the Constitution and laws of the United States, and the decision in said suit was in favor of the validity thereof; that rights, titles, privileges and immunities were in said suit claimed by petitioner under the Constitution, treaties and laws of the United States, and under commissions held and authorities exercised under the same, and the decision in said suit was against the said rights, titles, privileges and immunities, which were specially set up and claimed therein by petitioner under such constitution, treaties, laws, commissions and authorities, the whole as will hereafter more fully appear.

Petitioner avers that this suit was instituted in the eighteenth judicial district court for the parish of Acadia and State of Louisiana on the 15th day of September, 1900, by a petition wherein it was alleged, in substance, that the petitioner is the owner of certain lands situated in the said parish and State, by purchase from James H. Houston, Jr., who purchased the same from the only surviving heir of Bennet Joplin, deceased, and that the successive titles were duly recorded; that the United States on July 16th, 1900,
153 issued its patent confirming to the said Bennet Joplin and his heirs title to the said lands, which patent is annexed to the petition by which said suit was begun; that said lands were acquired by the said Bennet Joplin and his heirs under and by virtue of an act of the Congress of the United States, approved March 3, 1807, and under the treaties of the United States; that said lands are worth more than six thousand dollars; and it is averred that Theodore C. Chachere and John P. Boagni are trespassing thereon.

That by an amendatory petition, filed in the said district court on the 1st day of May, 1901, your petitioner averred, in substance, that the allegation in his original petition that the said Houston had acquired the whole of said lands from James W. Joplin, who was the sole surviving heir of the said Bennet Joplin, was made in error, through the inadvertence of his counsel; and in said amendatory petition the truth is alleged to be, that the said James W. Joplin was one of ten children of James Joplin, who was the sole

heir of Bennet Joplin; that petitioner has been appointed administrator of the succession of the said Bennet Joplin; that the said succession is the owner of a nine-tenths interest in said lands; and that, as such administrator, petitioner reiterates and adopts all the allegations of his original petition not inconsistent with the said amendment; while said amendatory petition was allowed by the said district court.

Your petitioner shows that the said defendant Boagni answered the said petition and the amendment thereof, admitting, in substance, that he is in possession of part of the said lands, and claiming to be the owner thereof under and by virtue of a conveyance from one Victor C. Sittig, who acquired the same at a sale thereof for taxes due the State of Louisiana, made by the tax-collector of said State on September 30th, 1871, confirmed by the auditor of public accounts of said State on May 19th, 1874, and duly recorded; and by his answer the said Boagni called in warranty his said vendor.

And the answer of the said Chachere, defendant to the said petition and the amendment thereof avers, in substance, that he purchased a part of said lands from Victor C. Sittig, being a part of the lands purchased by the said Sittig in 1871 at a tax sale
154 made by the State tax-collector.

And the answer of the said Sittig, called in warranty, to the said petition and the amendment thereof avers, in substance, that he purchased the said lands on September 30, 1871, at a tax sale thereof made by the State tax-collector for the satisfaction of taxes claimed to be due to the State of Louisiana, which said sale was confirmed by the auditor of public accounts of the said State, and duly recorded.

Your petitioner shows, that after trial of the said cause the said district court on September 28th, 1901, adjudged, in substance, that the said claims of petitioner be rejected, and that the said defendants be quieted in their title and possession of said lands; and your petitioner shows that said judgment, on the appeal herein taken to the supreme court of Louisiana, was there affirmed, as aforesaid.

Your petitioner avers, that by reason of the premises, as will more fully appear by a transcript of the record of the said cause, hereto annexed and referred to as a part of this petition, he is entitled to have the said errors, hereinabove set out, corrected by the judgment of the Supreme Court of the United States.

Wherefore your petitioner prays that your honors will grant him a writ of error, directed to the honorable the supreme court of Louisiana requiring the said court to send into the honorable the Supreme Court of the United States a duly authenticated transcript of the record of the said cause, the same to be there reviewed and proceeded with according to law. And he prays for all necessary orders and for general relief.

(Signed) BOATNER, DODDS & BOATNER,
Attorneys.

Order.

The foregoing petition and assignment of errors filed therewith being considered the writ of error as prayed for is allowed upon plaintiff giving bond, conditioned as the law directs in the sum of five hundred dollars.

(Signed) FRANCIS T. NICHOLLS,
Chief Justice.

New Orleans, May 24th, 1902.

155 (Endorsed:) No. 14216 Supreme court of La. F. M. Joplin *vs.* T. C. Chachere *et al.* Petition for writ of error. Filed May 26th, 1902. (Signed) Paul E. Mortimer, dep. clerk.

Assignment of Errors.

Supreme Court of Louisiana.

FERDINAND M. JOPLIN *vs.* T. C. CHACHERE ET AL. } No. 14216.

Plaintiff and appellant assigns the following errors in the judgment of the supreme court of Louisiana rendered herein:—

First. That the court erred in holding, that the confirmation of the claim of Joplin to certain lands therein described, by act of Congress was itself a complete investiture of the title of the said land in the claimant, because under the act of Congress confirming the same no sufficient description of said land was given to identify the same, and the same could only be segregated from the public domain by an official survey, approved by the surveyor general according to law.

Second. The court erred in holding that the aforesaid lands were segregated from the public domain of the United States by a provisional survey. Plaintiff and appellant shows that the same could not and did not become operative until approved by the surveyor general of the United States, which approval was not made until long after the alleged title of the defendants under the tax sale, as alleged in their answer herein had been made.

Third. The court erred in holding that the said land was segregated from the public domain before the conflict of title in the titles to said lands were adjudicated by authority of the United States, and that the tax sale under which the defendants herein claim title to the property in controversy was made before such settlement and adjudication by the officers of the United States Land Office.

Fourth. The court erred in holding the said land subject to State taxation before the issuance of the patent therefor by the United

States, and before the conflicting claims upon the same, shown by the record to have existed were adjudicated by the action of
156 the officers of the United States. The title to the aforesaid property until such adjudication rested in the United States, and the same as the property of the Government is not subject to State or parish taxation.

Fifth. The court erred in holding that the said property was subject to taxation before the same was segregated from the public domain, notwithstanding that plaintiff had an inchoate title thereto.

Sixth. The court erred in giving the precedence to a title originating from the State of Louisiana, over a patent and title originating under the authority of the United States.

Seventh. The court erred in maintaining a tax title made under the authority of the State of Louisiana, when the same upon its face showed that the assessment was made without notice to the owners of the property, as required by the laws of the State of Louisiana; that the sale was made without notice to the owners of the property to pay the taxes, as required by the laws of the State of Louisiana; that the owner of the property according to the assessment being an absentee, the sale thereof without the appointment of a *curator ad hoc*, upon whom necessary notice as required by law could be served, was contrary to the laws of the State of Louisiana; that the said sale being made in conflict with the laws and constitution of the State of Louisiana, as then existing, was a denial to the owner of the said property of the due protection of the laws, and the said sale in therefore in violation of said owner's rights under the Constitution of the United States.

(Signed) C. J. BOATNER,
Attorney for Plaintiff, Appellant.

GEO. S. DODDS AND
M. M. BOATNER,
Of Counsel.

(Endorsed:) No. 14216. Supreme court of La. F. M. Joplin *vs.* T. C. Chachere *et al.* Assignment of errors. Filed May 26th, 1902. (Signed) Paul E. Mortimer, dep. clerk.

Copy of Writ of Error.

UNITED STATES OF AMERICA, *ss:*

157 The President of the United States of America to the honorable the judges of the supreme court of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between F. M. Joplin and T. C. Chachere, John P. Boagni and Victor C. Sittig,

No. 14216 of the docket of said court wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of the clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said F. M. Joplin as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice
[SEAL.] of the said Supreme Court, the 24th day of May, in the year of our Lord, one thousand nine hundred and two.

(Signed) HENRY J. CARTER,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by

——— ———.

158 (Endorsed:) No. 14,216. Supreme court of La. F. M. Joplin *versus* (writ of error) T. C. Chachere *et al.* Copy of a writ of error lodged in the clerk's office of the clerk of the supreme court of the State of Louisiana in pursuance of the statute in such cases made and provided, this 26th day of May one thousand nine hundred and two. C. J. Boatner attorney of plaintiff in error. Boatner, Dodds & Boatner Edw. L. Wells of counsel. Filed May 26th, 1902. (Signed) T. McC. Hyman, clerk.

Bond for Writ of Error.

UNITED STATES OF AMERICA:

Know all men by these presents, that we, Ferdinand M. Joplin, individually and as administrator of the succession of Bennet Joplin principal and J. B. Thompson and Shelby Taylor as sureties are held and firmly bound, jointly and severally, unto T. C. Chachere, J. P. Boagni and Victor C. Sittig in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said T. C. Chachere, J. P. Boagni and Victor Sittig, their heirs, executors, administrators, and assigns, for which payment well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors and administrators, firmly by these presents.

Sealed with our seals, and dated the — day of June in the year of our Lord nineteen hundred and two.

Whereas, the said Joplin having heretofore, to wit: on the 24th day of May 1902, taken a writ of error to the Supreme Court of the United States, from and to reverse the decree rendered on the — day of — 187–, by the supreme court of the State of Louisiana in the suit of Ferdinand M. Joplin *vs.* Theodore C. Chachere *et al.* No. 14216 of the docket thereof.

Now the condition of the above obligation is, that if, the above bounden Ferdinand M. Joplin shall prosecute his said writ of error to effect, and shall answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void, other-
159 wise to remain in full force and virtue.

(Signed)	FERDINAND M. JOPLIN.	[L. S.]
Do.	G. B. THOMSON.	[L. S.]
Do.	SHELBY TAYLOR.	[L. S.]

Signed, sealed and delivered in the presence of

(Sg.) P. J. CHAPPUIS.
Do. T. R. BARNARD.

UNITED STATES OF AMERICA, *District of Louisiana*, } ss:

Personally appeared, G. B. Thompson and Shelby Taylor who being duly sworn deposes and says that they are the surety on the within bond, that they reside in the city of Crowley, in Acadia parish, State of Louisiana and are worth the full sum each of five hundred dollars over and above all of their debts and liabilities and property exempt from execution.

(Signed) G. B. THOMSON.
Do. SHELBY TAYLOR.

Subscribed and sworn before me, this 21st day of June, 1902.
[SEAL.] (Signed) ROBERT MONTGOMERY,
Notary Public.

(Endorsed:) No. 14216 Supreme court of Louisiana F. M. Joplin *vs.* T. C. Chachere *et al.* Bond for writ of error Filed June 23rd, 1902. (Signed) T. McC. Hyman, clerk.

160 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

I, Thomas McCabe Hyman, clerk of the supreme court of the State of Louisiana do hereby certify that the foregoing one hundred and fifty-nine pages contain a full, true and complete copy of the proceedings had in the eighteenth judicial district court for the parish of Acadia, in a certain suit — F. M. Joplin was plaintiff, and T. C. Chachere and others were defendants, and also of all the proceedings had in this supreme court on the appeal taken by said plaintiff, which appeal is now on the files thereof, under No. 14216.

Seal Supreme Court of the State of Louisiana.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this seventh day of July, in the year of our Lord, one thousand, nine hundred and two, and in the one hundred and twenty-seventh year of the Independence of the United States of America.

T. McC. HYMAN, *Clerk.*

161 UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

I, Francis Tillou Nicholls, chief justice of the supreme court of the State of Louisiana, do hereby certify that Thomas McCabe Hyman, is clerk of the supreme court of the State of Louisiana; that the signature of Thomas McCabe Hyman to the foregoing certificate is in the proper handwriting of him the said clerk; that said certificate is in due form of law and that full faith and credit are due to all of his official acts as such.

Seal Supreme Court of the State of Louisiana.

In testimony whereof, I have hereunto set my hand and seal, at the city of New Orleans, this seventh day of July, *anno Domini*, one thousand nine hundred and two.

FRANCIS T. NICHOLLS,
Chief Justice.

162 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the honorable the judges of the supreme court of Louisiana, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between F. M. Joplin and T. C. Chachere, John P. Boagni, and Victor C. Sittig No. 14216 of the docket of said court wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or

163 wherein was drawn in question the construction of the clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute or commission; a manifest error hath happened to the great damage of the said F. M. Joplin, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 24th day of May, in the year of our Lord one thousand nine hundred and two.

{Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.}

HENRY J. CARTER,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by

———.

[Endorsed:] No. 14,216 Supreme court of Louisiana F. M. Joplin *versus* T. C. Chachere *et al.* Writ of error. Filed May 26 1902 T. McC. Hyman, clerk.

164 (Original.)

UNITED STATES OF AMERICA, ss:

The President of the United States to Theodose C. Chachere, John P. Boagni, and Victor C. Sittig, Greeting:

You and each of you are hereby cited and admonished to be and appear at the Supreme Court of the United States of America, to be held at the city of Washington, District of Columbia, within 30 days from the date of this writ, pursuant to a writ of error filed in the clerk's office of the supreme court of Louisiana, wherein Ferdinand M. Joplin, individually and as administrator of the succession of Bennet Jopling, is plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 24th day of May A. D. 1902, and of the Independence of the United States the one hundred and twenty-fifth.

FRANCIS T. NICHOLLS,
Chief Justice of the Supreme Court of Louisiana.

Attest:

[Seal Supreme Court of the State of Louisiana.]

T. Mc. HYMAN,
Clerk of the Supreme Court of Louisiana.

UNITED STATES OF AMERICA,
State of Louisiana.

I hereby certify that I served the within citation on Theodose C. Chachere on the 5th day of July, 1902, at Eunice in the State of Louisiana, by then and there delivering to the said Theodose C. Chachere, personally, a true copy of the within citation.

B. A. CAIN.

Sworn to and subscribed before me this July — 1902.

[Seal of James J. Lewis, Notary Public, St. Landry Parish, La.]

JAMES J. LEWIS,
Notary Public.

165 UNITED STATES OF AMERICA,
State of Louisiana.

I hereby certify that I served the within citation on John P. Boagni on the first day of July, 1902 at Opelousas in the State of Louisiana, by then and there delivering to the said John P. Boagni, personally, a true copy of the within citation.

JNO. W. LEWIS.

Signed acknowledged and sworn to before me this 1st day of July, A. D., 1902.

[Seal of the Clerk of the Parish of St. Landry, State of Louisiana.]

A. LÉON DUPRÉ,
D'y Cl'k and ex-Officio Notary Public.

UNITED STATES OF AMERICA, }
State of Louisiana. }

I hereby certify that I served the within citation on Victor C. Sittig on the 5th day of July, 1902, at Eunice in the State of Louisiana, by then and there delivering to the said Victor C. Sittig, personally, a true copy of the within citation.

B. A. CAIN.

Sworn to and subscribed before me this July — 1902.

[Seal of James J. Lewis, Notary Public, St. Landry Parish, La.]

JAMES J. LEWIS,
Notary Public.

166 [Endorsed :] # 14216. F. M. Joplin *v.* T. C. Chachere *et al.* Citation on writ of error, Filed July 10, 1902. T. McC. Hyman clerk.

Endorsed on cover: File No. 18619. Louisiana supreme court. Term No. 96. Ferdinand M. Joplin, individually and as administrator of the succession of Bennet Joplin, plaintiff in error, *vs.* Theodore C. Chachere, John P. Boagni, and Victor C. Sittig. Filed July 24, 1902.

DEFENDANT'S

BRIEF

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 96.

FERDINAND M. JOPLIN, INDIVIDUALLY, AND AS ADMINISTRATOR OF THE SUCCESSION OF BENNET JOPLIN, PLAINTIFF IN ERROR,

versus

THEODORE C. CHACHERE, JOHN P. BOAGNI AND VICTOR C. SITTIG.

BRIEF FOR DEFENDANTS, APPELLEES.

I.

1. The *plaintiffs* herein aver that, by inheritance and purchase, and **under a United States Patent,** issued on July 16th, 1900, to Bennet Joplin, the confirmee of a Spanish Grant, confirmed by Act of Congress in 1816, they own, but that the defendants are in wrongful possession of, a certain tract of land in Acadia Parish, Louisiana, described as

(a) *Section 49, Township 7 South, Range 1 West; and*

(b) *Section 41, Township 7 South, Range 1 East,*

containing 870.06 Acres.

The *defendants*, on the other hand, insist that, under a **Tax Sale**, made by the State of Louisiana in 1871, before the issuance of the said patent, but after said land had been severed from the public domain, and had become liable to taxation, they own and possess, and for nearly 30 years prior to the bringing of this suit had, in good faith, owned and possessed the tract in Acadia Parish, Louisiana, described as

Section 41, Township 7 South, Range 1 East, containing 870.97 Acres.

The State Court rejected the plaintiffs' claim of ownership under the patent, and quieted the defendants in their titles and possession under the State Tax Sale. Thereupon the plaintiffs, by writ of error under the 25th Section of the Judiciary Act, brought the case into this Court on the theory that the judgment of the State Court illegally denied them the proper benefit of their patent.

2. It may be well to note here, that *in the original petition* in this suit, Ferdinand M. Joplin, the plaintiff, averred that he was the sole owner of the entire tract, "*by purchase from James H. Houston, Jr., who purchased from the only surviving heir of Bennet Joplin, deceased, titles being duly recorded in said parish.*" Tr. p. 1.

Subsequently, however, the plaintiff filed *an amended petition*, in which he averred that the person, James W. Joplin, who had assumed as sole heir of Bennet Joplin to sell the entire tract to James H. Houston, Jr., was in fact only one of ten heirs, so that his deed to Houston conveyed only 1-10th of the tract, and the other 9-10ths thereof

remained in the Estate, or in the other nine heirs, of Bennet Joplin. And averring that he had recently been appointed administrator of the Succession of Bennet Joplin, the plaintiff prayed *"for judgment in favor of petitioner, as administrator, recognizing the Succession of Bennet Joplin as owner of 9-10ths, and petitioner, in his own rights, as owner of 1-10th of said land."* Tr. pp. 25-6.

At the trial of the case, the plaintiff offered in evidence (Tr. pp. 31-33) the deed of sale from J. W. Joplin to J. H. Houston, Jr. (Tr. p. 8), and the deed of sale from J. H. Houston, Jr., to plaintiff (Tr. p. 10).

The deed of sale from J. W. Joplin to J. H. Houston, Jr., was executed *on June 18th, 1895.* The property sold is described as

> *"All his (vendor's) rights, titles, interest and demands in and to a certain tract of land, situated in the Parish of Acadia, State of Louisiana, containing 898.98 acres, more or less (Spanish Grant), No. 41, Township 7 South, Range 1 East.* **See parish map and a list of private land claims where above property is well defined as belonging to Bennet Joplin."** Tr. pp. 8, 9.

In the deed of sale to J. H. Houston, Jr., by F. M. Joplin, the plaintiff herein, there is a clause declaring that it is

> *"expressly understood that this sale is made without warranty, and the purchaser takes the title as it is, with a tax title against it."* Tr. p. 10.

The significance of the reference, in the deed of J. W. Joplin to J. H. Houston, Jr., June 18th, 1895, to the *"parish map and list of private land claims where above described property is well defined as belonging to Bennet Joplin,"* is this:

The 34th Section of the Revenue Act of Louisiana, for the year 1870, contained a clause which declared that,

> "*It is hereby made the duty of the Police Jury of each parish to procure, at the expense of the parishes respectively, from the original records of the United States surveys,* **a correct map, properly authenticated,** *of each and every township, and part of a township, contained in each parish, with* **approved field notes** *of the same, duly certified by the proper officer. Said map and field notes shall be bound in a substantial volume, and shall be deposited with the recorder of the proper parish, and be accessible to the parish surveyor, when called upon to make surveys, as well as to the tax collector when preparing his descriptive rolls for the assessment of taxes.*" **Acts of 1870, p. 135.**

The parish map referred to was the one made under the foregoing statutory provision and was a part of the public records of the parish. And it was a copy of this map, known to and used by the plaintiffs themselves, which the Supreme Court had before it, and which showed that a survey of the land had been made by N. H. Phelps, Deputy Surveyor, and approved by W. J. McCulloh, Surveyor General of Louisiana, as far back as 1856. Tr. p. 104.

The record shows that while James H. Houston, Jr., held the title to the land, he brought suit to recover this very tract from the present defendants (except Boagni) and in the petition in this suit he averred:

> "*That* **said** *land was* **confirmed** *to Bennet Joplin, as per report in American State Papers, Vol. 2, p. 720.*" Tr. pp. 11, 12.

II.

The assumptions upon which this suit was brought, though not expressly stated in plaintiffs' pleadings, evidently were:

1. That the plaintiffs are, partly by purchase and partly by inheritance, the representatives of one *Bennet Joplin;*

2. That Bennet Joplin, a soldier in the Revolutionary War, came to Louisiana about 1806 and acquired the *Spanish Claim, resulting from Occupancy and Settlement,* of one Joseph Chevalier Poiret to the land in controversy;

3. That on March 11th, 1812, the *Board of Commissioners* appointed, under Sec. 4 of the Act of Congress, approved March 3d, 1807, *confirmed* this claim to Bennet Joplin for 913.98 acres, under Certificate No. B, 1927, as shown by the Report of said Commissioners, found in the *American State Papers, Vol. 2, p. 720,* which reads, as to this claim, as follows:

No.	Date	Name of Person under whom Land was Claimed.	In Whose Favor Issued.	Nature of Claim.	Situation of Land.	Number of Acres & Hundredths.	Arpents & Hundredths in Front.
B 1927	March 11	Joseph Chevalier Poiret.	Bennet Jopling	Occupancy, 10 years.	County, Opelousas Water Course, Mallet's Woods.	913 98-100	1,000

302 (32 South.)

And this confirmation was *ratified and approved by Act of Congress,* passed April 29, 1816.

4. That *no Survey* of the tract so confirmed to Bennet Joplin was ever made and approved prior to May 9, 1900, and that, until a survey thereof had been made and approved, the tract had not been severed from the Public Domain, and was not liable to *Taxation* by the State;

5. That, accordingly (the tract not having then been severed from the Public Domain) the *Assessment and Sale of said tract for Taxes,* by the State of Louisiana, in the year 1871, was an *absolute nullity* and did not divest the

plaintiffs' title, nor prevent the subsequent issuance of a patent to them, unaffected by said Tax Sale;

6. That, even if the said tract had been severed from the Public Domain and had so become liable to taxation in 1871, still the Tax Sale thereof made that year was an *absolute nullity;*

7. That, accordingly, the plaintiffs acquired a perfect title to said tract *under the Patent issued on July 16th, 1900,* to Bennet Joplin, his heirs or assigns, and that the defendants, possessing under titles assumed to be and to have always been null, are mere trespassers.

The *defendants* concede assumptions (2) and (3), but insist:

1. That, where the *Board of Land Commissioners* have, as in this case, confirmed a Spanish Claim to a *Specific Tract,* based on the Occupancy of that tract by the claimant, and the confirmation of said Board *has been approved and ratified by an Act of Congress,* the title to said tract is thereby vested in the confirmee, *and no survey is required.*

2. That, however, if, under the facts just stated, a survey is required, *then such survey was made in 1856* by Noah H. Phelps, United States Deputy Surveyor, and *was approved* the same year by W. J. McCullough, United States Surveyor General for the State of Louisiana, and that the tract in controversy in this suit *has, since 1856, been carried on the public land maps of the United States for Louisiana,* as so surveyed and as the approved claim of Bennet Joplin.

3. That the plaintiffs herein, or some of them, *have, in this suit and in other judicial proceedings, and otherwise, admitted* such survey and condition of the land maps.

4. That the tract was, therefore, *liable to taxation* in 1871, and that the tax sale thereof then made was valid, *from every point of view.*

5. That even if the *tax sale* made in 1871 had been subject to a suit for annulment, on proof of facts extraneous to the tax record and proceedings, nevertheless, *it was valid on its face* and gave rise to the prescription of ten years in favor of the adjudicatee in good faith.

6. That defendants have been *in the actual and physical possession* of said tract since the tax sale in 1871; that their possession was *in good faith, notorious, peaceable and undisturbed;* that they have built and dwelt on said land, surveyed its lines, cleared and cultivated it, cut and sawed timber from it, and generally exercised all acts and powers of ownership.

7. That *the titles* under which defendants so possessed said lands were *valid in terms* and translative of property and duly recorded.

And that *defendants have paid all taxes* assessed against said lands since 1871.

And accordingly, defendant's titles *are now valid by prescription*, even if there had originally been any infirmities therein.

III.

The controlling issues in the case are:

1. *As a matter of law*, was it necessary that a survey of the Bennet Joplin claim, after its confirmation by the Board of Commissioners in 1812, and the approval of that confirmation by Act of Congress in 1816, should be surveyed made and the survey approved, before the tract became severed from the Public Domain?

2. *As a matter of fact*, was such survey made and approved by the United States Surveyor General for Louisiana in 1856?

3. Was the Tax Sale, made in 1871, *valid*?

4. Or, if said Tax Sale was liable to suit for annulment, *was it nevertheless such a title as would give rise to a perfect prescriptive title after the lapse of 10 years*?

We respectfully submit that this Court will not review the judgment of the State Courts on the 2nd, 3rd and 4th issues.

IV.

Both the District Court, in which the suit was instituted and tried, and the Supreme Court of Louisiana, on appeal, rejected the plaintiffs' demand and quieted the defendants in their titles to and possession of the land. The reasons and findings of fact upon which the Louisiana Courts based their judgment in favor of the defendants are shown in the following extracts from their opinions:

1. **From Opinion of the District Court:**

"The Court, after reviewing the authorities submitted to it, arrived at the following conclusions:

"That the property herein sued for is the property which was *confirmed to Bennet Joplin by the board of commissioners*, acting under the Act of Congress, approved March 3, 1807, and that this act of Congress (the Commissioners) confirming title to the land in dispute *was ratified and approved by the Congress of the United States on April 29, 1816.*

"The court is further of the opinion that the land *was duly surveyed and its location made definite and certain* by the survey of Noah H. Phelps, made in the first and second quarters of 1856, as appears by patent.

"The court is further satisfied that, by virtue of the act of Congress confirming this land grant, together

with the survey of the same, as appears by the patent introduced in evidence by the plaintiff, *there was a severance of the land from the United States as far back as 1856*.

"Moreover, this being a petitory action, it was incumbent upon plaintiff to recover upon the strength of his own title, and not upon the weakness of his adversary's. If there were defects in the certificate of confirmation, or if there had been no public survey made in the manner required by law, as contended for by plaintiff, it was his duty to establish this fact."

* * * * * *

"For these reasons, and by reason of the further fact that the tax title under which defendant claims *has never been assailed, and unless proved to be of absolute nullity, must prevail*; 47 An. 326, Belani and Johnson vs. Gebelin and Duggan; Constitution of 1866, Art. 118; Constitution of 1879, Art. 210, and Constitution of 1898, Art. 223," judgment was for defendants.

2. **From Opinion of Supreme Court of Louisiana.**

a. *Confirmation of Claim in 1812 and 1816.*

"We do not think there is any dispute between the parties as to the fact that, on the **12th of March, 1812,** *the Board of Commissioners* appointed under section 4 of the act of Congress, approved March 3rd, 1807, *confirmed* to Bennet Joplin under certificate 1927, *by virtue of occupancy and settlement under Joseph Chevalier Poiret*, 913.98 acres of land in Bayou Mallet woods in the County of Opelousas; that on **April 29th, 1816,** *Congress*, reciting the various acts bearing upon the subject (act of March 10th, 1812, act of February 27th, 1813, and act of April, 1814), *passed an act for the confirmation of certain land claims* in the western district of the State of Louisiana, and that under section 4 of that act it was enacted 'that **the claims marked** 'B,' described in the reports of the commissioners for the western district of the State of Louisiana, formerly territory of Orleans, and recommended by them for confirmation, **be and the same are hereby con-**

firmed;' *that the claim of Bennet Joplin*, covered by certificate No. 1927 of the board of commissioners, *was confirmed in favor of Joplin by that act of Congress;* that although the claim was so confirmed by act of Congress, **no patent** was issued for the land by the United States Government until **July, 1900.**"

* * * * * *

b. *Claim Confirmed was for a Specific, Particular Tract.*

"What they (Board of Commissioners) had presented then was a right or privilege claimed to *be already existing upon* **certain specific property** in favor of John Bennet Joplin, and under and by reason of the original *occupancy and settlement* thereon of Joseph Chevalier Poiret, continued we presume by Joplin as Poiret's assignee. The evidence which Joplin introduced before the board in support of his claims is not before us, but unquestionably there was proof before it justifying its confirmation.

* * * * * *

"It is evident that Poiret was shown to the board to have already occupied and settled **a particular body of land** for the time stated and to have already had an existing right or privilege *to a particular tract.* The *identity* of the tract confirmed must have been fixed by evidence before the board, and the survey which followed was unquestionably based upon that evidence preserved and made known to the surveyor. The Joplin claim under Poiret was *not* based upon *the survey*, but *the survey was based upon the existing claim*, and simply identified the land to which Poiret and Joplin were entitled *by antecedent occupancy and settlement.* The rights of Poiret and Joplin did *not originate* in the action of the board of commissioners and that of Congress. Their action was simply *recognitive and declaratory*, as the word *confirmed*, used in connection with it, plainly shows. The Government practically and substantially *never claimed this land* as belonging to it and as forming part of the public domain. The confirmation was in the nature of a quit-claim or relinquish-

ment by the Government of any right or interest in the land claimed."

* * * * * *

c. *Never any conflict as to Tract now in Suit.*

"It is not claimed that there ever has been any adverse claim to it (the claim) *as a whole*, though there was at one time a conflict *as to a part of the land, other than that involved herein*, between the Joplin claim and that of one or two other claimants. *The conflict did not extend to any portion of the land now in litigation.*"

d. *No Survey Required.*

"Neither Joplin nor his heirs could disconnect themselves so far as they were concerned from their claim of ownership of this land under Poiret's rights, in order, for their private purposes, *to refer the origin of their right of ownership to the patent* which the Government issued recognizing their right *ab initio*. The plaintiff here is *contesting* the already acquired rights of their own asserted author. Joplin and his heirs *became the absolute owners* of the land, which was occupied and settled by Poiret, *prior to the confirmation*, against the Government itself, and every one under it, *from the date of confirmation by Congress.*

* * * * * *

"We are of the opinion that the property in question *became the property of Bennet Joplin from the moment his claim was confirmed by act of Congress* and became subject from that time, in his favor, to full rights of ownership, and that it became subject also from that time to all the obligations which are incidental to property held in private ownership by individuals—*among other obligations to that of State taxation.*"

* * * * * *

e. *But Survey was actually made and approved in 1856.*

"If, however, **a survey** of the claim was necessary in order to complete the transfer of ownership to Joplin, *we are satisfied that a survey of the same was made and approved by the surveyor general, W. J. McCulloh, as far*

back as 1856. The present surveyor general of Louisiana refers to the survey and field notes of Phelps as having been *approved*, but not as a matter of *original approval by himself*, as the plaintiff seems to contend. In the *act of sale* of this land, under which the plaintiff claims, from James W. Joplin to James H. Houston, Jr., the land transferred is referred to as a '*Spanish grant*,' with the added words ('*see parish map and a list of private land claims where the above described property is well defined as belonging to Bennet Joplin.*') **We have before us a copy of the parish map here referred to** with the different private claims (among others that of Bennet Joplin) distinctly set out and the surveys on which they were located minutely detailed, *certified to as far back as 1856 by the surveyor general.* It may be that it is not strictly and technically in evidence, but it is before us by reference in one of the acts, and were we not to act upon it the only effect would be to remand uselessly the case in order to have it formally introduced."

* * * * * *

f. *The Tax Title, made in 1871, even if liable to attack, became valid by the Prescription of 10 years.*

"Plaintiff is correct in his statement, that upon a number of occasions we have declared that an assessment made in the name of a dead person is improperly made, and carries with it the nullity of a tax sale based upon it, but that rule has its limitations, and we do not think it can or should be applied in this case. It is a *latent defect* which the tax purchaser *is not bound to ascertain or know.* It is not one whose actual existence cuts him off from invoking *good faith as a basis for the prescription of ten years, acquirendi causa.*"

* * * * * *

g. *Defendants in Possession of the Tract in Good Faith and under prima facie Valid Titles.*

"Plaintiff is seeking to enforce a neglected and apparently an abandoned right to the ownership and pos-

session of property to the prejudice of parties *who have been in possession of it nearly long enough to have acquired ownership of the same without any title whatever.*

"These particular parties, however, **hold in good faith,** *under titles derived originally through official proceedings taken out by State officers in the enforcement of the State's rights.* They are *not trespassers,* as the plaintiff alleges them to be, nor were they originally trespassers.

* * * * * *

"This is precisely what has happened here. The plaintiff occupies, *quoad* the State and the parties holding under the State's title, the status of an unknown, re-appearing to assert neglected and abandoned rights *to the prejudice of parties holding titles acquired from the State* **in good faith,** *and holding actual possession under them for nearly thirty years.* Plaintiffs' claim *is without equity.* They cannot oust the defendants from property which they have bought, paid for and improved while they have stood in the background until values have risen, to which they have contributed nothing. 145 U. S. 317; 145 U. S. 368; 178 U. S. 208."

V.

To recapitulate briefly:

The plaintiffs cannot recover the land sued for unless it be held:

a. That the tract sued for *was not severed from the public domain,* so as to become liable to be assessed and sold for State taxes prior to the issuance of the patent in July, 1900; or,

b. That, even if the tract was so severed from the public domain, still *the tax sale* thereof in 1871 was *a mere nullity,* and has not become valid by the effect of prescription.

And the Supreme Court of Louisiana rejected the plaintiffs' demands on the grounds:

a. *That where a person is entitled to demand a patent for a particular and determined tract of land, he is to be treated as the owner of that tract, and the land as consequently liable to taxation, even though he neglects to take out the patent.*

b. That the original *claim was for a specific, particular tract,* and that, after confirmation of the claim by the Board of Commissioners in 1812, and by Congress in 1816, the particular tract claimed and confirmed stood severed from the public domain, and *no survey thereof was required* to perfect the confirmee's title.

c. That if any survey were legally required, then, *as a fact,* one was made and approved by the proper United States officials *in 1856,* and that the tract has since been carried on the United States public land maps, precisely as shown by said survey, and as a tract severed from the public domain and covered by a confirmed Spanish Grant claim.

d. That even if the tax sale made in 1871 might have been attacked for nullity, within a limited time, still *it was prima facie valid and that the right to attack it is barred by the prescription of 10 years.*

VI.

Let us now consider the several propositions upon which the Supreme Court of Louisiana rested its opinion and judgment.

1. **That where a person is entitled to demand a patent for a particular and determined tract of land, he is to be treated as the owner of that tract, and the land as liable to taxation, even though he neglects to take out the patent.**

This proposition is so well established that it requires no discussion. A patent is merely evidence of a grant; it adds nothing to the grantee's rights, but only furnishes him with convenient proof thereof.

See **Carroll vs. Safford, 3 How. 441.**
Railway Co. vs. Prescott, 16 Wall. 603.
Railway Co. vs. McShane, 22 Wall. 444.
Simien vs. Perrodin, 35 An. 931.
Barney vs. Dolph, 97 U. S. 652.
Stark vs. Starrs, 6 Wall. 402.
Moran vs. Horsky, 178 U. S., 212 of opinion.

Plaintiffs insist that no patent could issue and that there could be no severance from the public domain until there had been a determination of all conflicts between the location of the Bennet Joplin claim and the locations of all adjacent tracts. This contention, we submit, is nothing more than another way of asserting that there is no severance from the public domain until the patent issues, and it is, therefore, answered by the authorities above cited. In many cases, the tract claimed becomes severed from the public domain by proceedings other than the issuance of the patent. And the owners of lands severed from the public domain are subject to be impleaded for alleged conflict of location, in whatever way the severance may have been effected.

What was called in this case the settlement of conflicts on the issuance of the patent, was simply an examination of the records of the Land Office, to ascertain the order of time in which certain tracts were severed from the public domain and were either transferred

or declared to be the private property of named persons. In this examination, the officer who had charge of the issuance of the patent, dealt with adjacent, and possibly overlapping tracts, *which had already been severed and parted from the public domain.* The object of the inquiry was to determine, not what lands *should be severed,* but in what order of time *the already effected severances* occurred. The several claimants were not notified of the proceeding and were not heard, and their respective rights were wholly unaffected by the conclusion reached. That conclusion, as embodied in the patent, simply means that the records of the Land Office *prima facie* show that certain lands were severed from the public domain in favor of claim A before they were severed in favor of claim B, and therefore the patent will follow the record as to apparent time of severance, but without prejudice to the right of the parties to appeal to the courts to decide the matter.

The so-called settlement of conflicts settles nothing but the determination of the Land Office to conform its patent to the order of time in which particular severances have previously been effected.

It is obvious that in this case no conflict existed in 1900 which had not been allowed for in the survey of 1856. For the tract was assessed and described in 1871 just as it was described on the Parish Map, and the Parish Map was a certified copy from the approved maps in the United States Land Office. Now the tax deed executed in 1871, and the confirmation of the tax deed executed in 1874, both describe the tract assessed and sold for taxes as being **"Section 41, Township 7 South, Range 1 East,"** and as containing **870.97 acres** (Tr. pp. 45-46). The only difference

between this description and that in the patent (Tr. p. 87), is that the patent described the tract as being also *partly* in **Sec. 49, Township 7 South, Range 1 West,** and as containing **870.06 acres.** But on examining the map that is made part of the patent, it will be seen that only an infinitesimal part of the tract runs into Section 49—probably not a quarter of an acre. This was perhaps due to the fact that when the survey was accurately platted for the patent, it was found that a minute portion of the survey extended into T. 7, S., R. 1 W., and this portion was added as Section 49. It is clear that the survey of 1856 did not embrace Sections 65 and 66. If there had ever been any conflict as to Sections 65 and 66, it must have been settled before or by the survey of 1856. For if that survey and the parish map made from it had embraced Sections 65 and 66, they would certainly have appeared in the assessment and in the tax sale, both of which were based on the map of the survey of 1856.

The theory of any conflict having existed, as a matter of fact, is too shadowy to deserve consideration. And if there ever was a conflict, it did not involve the land now in suit. And whether there was or was not a conflict, the entire tract stood severed from the public domain after the approved survey of 1856. The title of the Government was wholly and forever extinguished to all the land included in the survey, though there might still have been a question whether Joplin could take all within the lines of the survey, or whether some parts of the area so included had not already been granted to others. That controversy did not concern the Government or reinstate its title, if it ever had a title.

In addition to this, we submit that **the fact of any conflict is not established.** The plaintiffs offered two letters to show that there was a conflict. The defendants objected, and the offered documents were excluded. (Tr. pp. 33, 79, 81). The Court may have erred in excluding these letters, but this Court does not review the action of the State Court **in excluding or admitting evidence.**

Sherman vs. Grinnell, 144 U. S. 202.
Cleveland Ry. Co. vs. Backus, 154 U. S. 443.
Segund vs. Denny, 158 U. S. 185.

If, however, this Court deems the exclusion of the letters offered by the plaintiffs to prove conflict, a matter which is within its province to examine and review, it will be seen that the writings were properly excluded. These letters were:

1. A private letter, of date February 17th, 1900, from Binger Herman, Commissioner, to E. L. Wells, in response to a letter to him from the latter. (Tr. p. 81).

2. A communication, of date April 6th, 1900, in the form of a joint letter from Cohen, Register, and Johnson, Receiver, to James Lewis, Surveyor General.

Let us consider the exclusion of these letters.

1. Letter of February 17th, 1900—Herman to Wells.

Mr. Wells, as attorney for plaintiffs, wrote to Mr. Herman, and the latter replied. Neither the whole nor any part of this correspondence makes evidence against the defendants, or is admissible for any purpose against them. When offered to prove the fact of a conflict, it was properly excluded.

2. Letter of April 6th, 1900—Register and Receiver to Surveyor General.

This communication is in the form of a letter. But regardless of its form, it certainly is not evidence of any action that the Register and Receiver had authority to take. The writers claim, in the letter, to act pursuant to the authority conferred by Sec. 6 of Act of March 3rd, 1831, U. S. Stat. p. 492. But on referring to the statute, it will be found that authority is conferred on the Register and Receiver **"to decide between the parties"** and "in such manner as may be consistent with the principles of justice." There can be no decision between parties consistent with the principles of justice, unless the persons interested are notified. The intention of the statute is that the decision shall be given at the instance of the parties concerned.

Now the letter of the Register and Receiver shows that they did nothing but examine and report the state of their records. There was no decision between parties, nor any parties to decide between. The action was not such as the Act of 1831 authorized, and was not a decision between the parties as to any conflict which the parties called on them to decide. They did nothing more than answer the Surveyor General's letter. A letter from the Register and Receiver to the Surveyor General, informing him that they had reached a certain conclusion as to the priority of certain claims, represents no official action of the Register and Receiver which can be proved by the letter alone. The existence and *prima facie* merits of the conflict, if any, could be proved only by a proceeding *inter partes*, as contemplated by Sec. 6 of Act of March 3rd, 1831.

The letter of the Register and Receiver to the Surveyor General was, therefore, properly excluded.

The record does not, then, contain a scintilla of evidence, showing that any conflict existed. Thus the argument based on the assumed conflict falls to the ground.

It is the settled rule in Louisiana, as elsewhere, that lands become taxable as soon as the right of an individual to a definite and bounded tract becomes final *as against the Government.* With respect to Spanish claims this point is reached, *either* when a claim to a specific tract, settled and occupied by the claimant, is allowed by the Commissioners and confirmed by Act of Congress, *or* when, after such allowance and confirmation, the claim has been surveyed and the survey approved by the Surveyor General for the State. Under either test the Bennet Joplin tract was subject to taxation after 1856.

2. **That the Confirmation by the Commissioners and by Congress of a claim originating under the Spanish Government, to a Particular Tract, carried title thereto without a survey or patent.**

Two questions are involved in this proposition—one *of fact*, the other *of law*. The question *of fact* is this: "*Was the claim, as made and confirmed, one to a particular, specific, determined and bounded tract?*"

The Supreme Court of Louisiana held that the claim was made and confirmed *to a particular body of land*. The claim was based on "*Occupancy and Settlement for 10 years.*" The very nature of the claim postulates a specific location and boundary. Again: The claim was made and confirmed for 913.98 acres. These exact figures demonstrate that the

tract had been surveyed and its contents calculated, all of which necessitated the fixing of the bounding lines.

So that if this Court were at liberty to re-examine this question of fact, it would be forced to reach the same conclusion which the Supreme Court of Louisiana has reached with regard to it. The conclusion of fact was that Bennet Joplin went before the Board of Commissioners with a claim to be recognized as owner of a particular tract of land, having an exactly stated area, included within defined boundaries, and on which he and the author of his titles had resided for more than ten years, prior to the purchase of Louisiana, and had so become entitled to be recognized as owners thereof.

This finding of fact by the State Court will not be questioned by this Court. **Thayer vs. Spratt, 189 U. S. 353; West. Un. Tel. Co. vs. Call. Pub. Co., 181 U. S. 103.**

The *legal* question is this: *Does the allowance and confirmation by the Commissioners and by Congress of a claim to a particular, determined tract, in itself carry title to the confirmee, without survey or patent?*

This question is answered in the affirmative by the decision of this Court in **Langdeau vs. Hanes, 21 Wall. 521,** in which the facts were perfectly analogous to those in the present case. In the Hanes case, there was drawn in question the confirmation of a French grant in Illinois, made while that territory was under the dominion of France. In the treaty by which the country was acquired, it was stipulated that the inhabitants should be protected and confirmed in their possession and titles. The procedure by which this treaty obligation was discharged was exactly the same as that adopted for the discharge of the same treaty obligation in

Louisiana. That is, a Board of Commissioners was appointed to whom the claims were submitted, and Congress passed acts approving the confirmations of this Board.

In the Hanes case, the precise question arose as in the present case, namely, whether the confirmation by the Commissioners and by Congress of a claim, arising under the former government, to a *specific* tract of land, in itself carried the title to the confirmee, or whether a survey and patent were required.

In deciding that question, this Court said:

> "It was for *confirmation* of existing possessions and titles that the deed of cession (from Virginia to the United States) stipulated, not the transfer of any *new* title.
>
> * * * * * *
>
> "The United States took, therefore, the territory ceded by Virginia, bound by the established principles of public law to respect and protect all private rights of property of the inhabitants of the country, and bound by express stipulation *to confirm the possessions and titles* of the French and Canadian inhabitants and other settlers mentioned in the deed of cession who had professed themselves citizens of Virginia.
>
> * * * * * *
>
> "In the legislation of Congress a patent has a double operation. It is a conveyance by the government *when the government has any interest to convey*, but where it is issued *upon the confirmation of a claim of a previously existing title*, it is documentary evidence, having the dignity of a record, of the existence of that title, or of such equities respecting the claim as justify its recognition and confirmation. The instrument is not the less efficacious as evidence of previously existing rights because it also embodies words of release or transfer from the government.

"In the present case the patent would have been of great value to the claimants as record evidence of the ancient possession and title of their ancestors and of the recognition and confirmation by the United States, and would have obviated in any controversies at law respecting the land, the necessity of other proof, and would thus have been to them an instrument of quiet and security. *But it would have added nothing to the force of the confirmation*. The *survey* required for the patent was only *to secure certainty of description in the instrument*, and to inform the government of the quantity reserved to private parties from the domain ceded by Virginia." **Langdeau vs. Hanes, 21 Wall. 527, 529.**

The decision in **Langdeau vs. Hanes** has been followed in many subsequent cases.

Assuming *the fact* to be, as found by the Supreme Court of Louisiana, that the claim of Bennet Joplin was for a specific tract, and that it was confirmed for that specific tract by the Commissioners and by Congress, then it follows, under the decision in Langdeau vs. Hanes, that the confirmee's title was complete, for all purposes of ownership and taxation, from the date of confirmation in 1816. No survey or patent were required.

3. **But if a survey is required, then, as a matter of fact, one was made and approved by the proper officers in 1856, and the tract has since been carried on the public maps as the approved Bennet Joplin claim.**

By reference to the extracts hereinabove printed from the opinions of the District Court and of the Supreme Court of Louisiana, it will be seen that *both* of these courts found that, **as a fact**, a survey of the Bennet Joplin

tract was made and approved by the United States Surveyor General of Louisiana in 1856.

Now it is immaterial on what evidence the State courts based their finding of fact in this matter. This Court will not inquire whether that evidence was adequate or inadequate to support the conclusion which the State courts reached as to the fact; nor will this Court undertake to decide that any evidence considered by the State courts was not properly admitted, or that the State courts should not have taken certain evidence into consideration at all. All these questions belong exclusively to the State courts and their action upon them will not be reviewed by this Court.

> "It is not competent, under existing laws, for this Court to inquire whether the State Court correctly interpreted the evidence as to the Company's insolvency. * *" **Chicago Life Ins. Co. vs. Needles, 113 U. S., p. 684.**

Assuming the fact to be, as declared by the State courts, that a survey of the tract was made and approved by the proper officials in 1856, it follows that, in any case, from the date of the making and approval of that survey in 1856, the claim stood perfected and the land became subject to all the incidents of private ownership, including the liability to assessment and sale for State taxes. *See authorities, supra.*

If this Court, however, should look into the evidence touching the survey made in 1856, it will certainly reach the same conclusion that was reached by both the State courts.

To begin with, the Supreme Court had physically and visually before it, a certified copy of the map, showing the

fact to be as found. The statement in the opinion that this was the case, leaves no doubt that the fact was as declared by the Supreme Court. The only question that could arise would be whether the Supreme Court should have considered at all documentary evidence which was not, perhaps, technically in evidence in the record. But the Supreme Court stated that the only effect of not considering and acting upon it at once would be to uselessly remand the case in order to allow the defendants to offer the document in evidence. This gave the plaintiffs the right to ask for the remanding of the case, if they were not satisfied with the regularity of the document, or if they wished to offer evidence rebutting its *prima facie* effect. Such a course would have safe-guarded any rights they might have had. But the plaintiffs did not ask for the remanding of the case in order to contradict or explain the map. In their application for a rehearing they simply denied the right of the Supreme Court to consider the map at all. On this issue the Supreme Court denied the application for a rehearing. The irresistible inference was that the document was regular and the plaintiffs recognized that they could not contradict or qualify it, if the case were remanded.

Now all of this was purely a matter concerning the regularity of a matter of State practice, into which this Court will not inquire.

Further, the plaintiffs have not, in their *assignment of errors*, complained of the action of the Supreme Court of Louisiana in basing its conclusion partly on this map.

The plaintiffs have attempted to introduce into the record a copy of a letter written to them by the Commissioners of the Land Office relative to a contest. Possibly this course

warrants us in confirming our assertion that the survey was made and approved in 1856, just as the Supreme Court finds it was, by the following letter from the Surveyor General of Louisiana:

"NEW ORLEANS, La., October 7th, 1901.
"MR. GILBERT DUPRE,
Atty. at Law, Opelousas, La.
"Dear Sir:

"I am in receipt of your letter dated October 4th, 1901, regarding the patent for claim of Bennet Joplin, and in reply beg to inform you that N. H. Phelps, U. S. Deputy Surveyor, *resurveyd both townships*, viz: T. 7 S. R. 1 W., and T. 7 S. R. 1 E., South Western District, La., in the years 1855 and 1856.

"This office only approved the *Patent Plat* on May 9, 1900, and *not the survey*, as that was *not necessary*, it having been approved by W. J. McCulloh, U. S. Surveyor General, La., in 1856 and 1857, as shown by the official maps.

"A certificate to this will cost you $1.00.

"The dates of survey are not placed on Patent Plates.

Very respectfully,
(Signed) JAMES LEWIS,
Surveyor General, La."

The 3rd paragraph of Sec. 2223 of the U. S. Revised Statutes makes it the duty of the Surveyor General *to cause to be surveyed all private land claims within his district, after they have been confirmed by authority of Congress.* The survey of the Bennet Joplin claim was made under this law in 1856. And a copy of this survey appeared in the official parish map, and one of the plaintiffs herein refers to the parish map as showing the claim well defined thereon.

In brief the fact is, and all the parties to this suit know that the fact is, as found by the State Courts, that the survey of the Bennet Joplin claim was made and approved

and entered on the United States Land Maps in 1856; that the description in the parish map was a copy of this survey; and that one of the parties plaintiff, in 1895, before the issuance of the patent, sold by reference to this survey as carried on the parish map, which was made under the Act of 1870 from certified copies of the United States Land Maps as then existed.

Now from the time the survey was made and approved and entered on the land maps of the United States, the tract was severed from the public domain, and the grantee's right thereto was perfect. He might never call for a patent; and if he never did, his rights and obligations as owner would be in no manner impaired. Neither could he escape from the duty to pay taxes on the tract by neglecting to take out the patent. Immunity from taxation is not secured on such easy terms.

Assuming the tract to have been liable to taxation in any event, from the approval of the survey in 1856, we come finally to the question of the validity of the tax sale, either when first made, or when the title resulting therefrom had, with the lapse of time and adverse occupancy, extinguished the rights of the original owner.

4. **As to the Validity of the Tax Sale, and the Prescriptive Validity of the Tax Title.**

The Supreme Court of Louisiana, expressing no opinion as to the validity *vel non* of the tax sale, held that, whether valid or null, the adjudicatee acquired in good faith, under a *prima facie* title, and having had actual possession for more than 10 years, his title had become valid by pre-

scription and had extinguished the rights of the original owners.

There is no question but that the adjudicatee took complete possession of the tract in 1871. He had it re-surveyed; he built on it, and cleared it, and cultivated it, and cut and sawed timber from it; and exercised every imaginable right of ownership. He and his several vendees had regularly paid all taxes assessed against the land for nearly 30 years when this suit was brought. The tax title made in 1871 and all sales by the adjudicatee had been duly registered in the proper conveyance books.

In this situation, the State court was called upon to decide whether the tax title of 1871 and the subsequent titles derived from it, were such as would become impregnable after 10 years, on proof of possession held under them. And the Supreme Court of Louisiana held that, even conceding that the tax sale might, during a limited time, have been successfully attacked, still the adjudicatee was in good faith and his title *prima facie* valid, and therefore it extinguished the adverse right after 10 years' possession.

This ruling does not present any Federal question. Whether a particular deed is or is not sufficient to put the statute of limitations in motion, and what length of time will perfect a void deed, or extinguish an adverse right, are questions of State law, which this Court will not review. This Court has declared that it is bound to follow the ruling of a State court which held, that even "*a void deed, accompanied with actual occupancy, is sufficient to set the Statute (of limitations) in motion.*" **Dibble vs. Bellingham Bay Land Co., 163 U. S. 72.**

"No rule is more firmly established than that this Court will follow the construction given by the Supreme Court of a State to a Statute of limitations of a State." *Id.* p. 73

"The courts of the United States, in the absence of legislation upon the subject by Congress, recognize the Statutes of limitation of the several States, *and give them the same construction and effect which are given by the local tribunals.*" **Leffingwell vs. Warren, 2 Bl. 399; Bauserman vs. Blunt, 147 U. S. 652.**

Accordingly this Court, in the case of **Poppe vs. Langford, 104 U. S. 770,** held that it could not review the decision of a State court upon the question whether a given title should or should not extinguish the adverse right by prescription.

"It is clear we have no jurisdiction in this case.

"All the court below decided was, that in California *the title of the true owners of lands is extinguished by an adverse possession under color of right* for the length of time which would be a bar to a recovery in ejectment. This is not a Federal question." p. 771.

This Court, then, will not review the decision of the Louisiana Supreme Court, that the tax sale of 1871, whether voidable or void, furnished the adjudicatee with a *prima facie* valid title; that the adjudicatee was in good faith and actually occupied the land for nearly 30 years, and that such adverse occupancy for 10 years, based on such title, extinguished the original owner's rights.

The assignment of errors (Tr. p. 113) avers that the Supreme Court of Louisiana erred in maintaining a tax title, though there had been *no notice of assessment, no notice to pay the taxes assessed* and *no appointment of a curator ad hoc to represent the absent assessee.* The foregoing are the sole defects alleged as invalidating the tax title of 1871. Now, the Supreme Court of Louisiana did not feel called upon to

say whether it did or did not consider the above defects sufficient to invalidate the tax title of 1871. It refrained from expressing any opinion on that point, but held that the tax title was *prima facie* good and sustained the plea of 10 years' prescription. As this question was presented and decided, the plaintiffs were not denied, but were accorded and enjoyed the due protection of the law. The question was simply: *"Is the tax title of 1871 prima facie valid, and will it support the 10 years' prescription?"* The plaintiffs were heard on this issue, and their complaint now is, that the Louisiana Supreme Court erred in its decision.

> "An examination of this question, among others, was made by the State Court after full hearing of all parties, and all that can possibly be claimed on the part of the plaintiff in error, is that such court erroneously decided the law. That constitutes no Federal question." **N. O. Waterworks Co. vs. La., 185 U. S. 351.**

In the case of **Castillo vs. McConnico, 168 U. S. 674,** this Court reviewed at length the principles by which it must be controlled in deciding whether it will review the decision of the Louisiana Supreme Court, upholding a tax title. And it was held that it was for the Louisiana Court to construe the tax statute and to determine what it required. And if the Statute, so construed, was not in conflict with the 14th Amendment, this Court has no jurisdiction to inquire into the validity of a title derived under the Statute.

In the present case, the plaintiffs do not attack the constitutionality of the Statute; they merely complain that, in applying the Statute, the Louisiana Supreme Court has worked out an erroneous result. The result complained of is that the Court holds a tax title to be *prima facie* valid

and a proper basis for the 10 years' prescription. Even if the decision of the Louisiana Court on this point was erroneous, which it clearly is not, that error would not raise a Federal question. It has been held in numerous cases that, where the Statute is not assailed, this Court will not review alleged errors of the State courts in the administration of the Statute, because, it is charged, such errors bring about a denial of due process of law. **Lent vs. Tillson, 140 U. S. 331.**

As the land was liable to be taxed after 1856 in any case, and as this Court will not pass upon the validity of the tax title, we submit that the judgment of the Supreme Court of Louisiana should be affirmed.

In conclusion, we beg to be permitted to call attention to the utter want of equity in the demand made by the plaintiffs. Their claim for the land in controversy was confirmed by Congress in 1816, nearly 90 years ago. They were entitled to a patent at once. If a survey had been required, it could have been made in a few days. The land confirmed to them was so severed from the public domain that the Government could thenceforth neither sell it nor open it to entry nor settlement, nor dispose of it in any manner. Neither Joplin nor his heirs have ever paid one cent of taxes on the land. They permitted it to be sold for taxes and the purchasers of the tract have lived upon it for nearly 30 years, paid taxes, and cultivated and improved the land. Children have been born to the purchasers, and have grown up. And now the plaintiffs suddenly emerge and claim the tract as theirs by collateral inheritance to the original confirmee, of whom

they know so little that they can scarcely trace their relationship to him.

Every presumption is against a claim so long abandoned, and plaintiffs can succeed only by making the most convincing proof of the facts which could destroy the title of the defendants in possession.

Respectfully submitted,

E. D. SAUNDERS,

G. L. DUPRÉ,

Attorneys for Defendant.

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Supreme Court of the United States.

No. 96.

FERDINAND M. JOPLIN, INDIVIDUALLY AND AS ADMINISTRATOR OF THE SUCCESSION OF BENNET JOPLIN, PLAINTIFF IN ERROR,

vs.

THEODORE C. CHACHERE, JOHN P. BOAGNI, AND VICTOR C. SITTING.

BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

S. D. McENERY,
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Supreme Court of the United States.

No. 96.

FERDINAND M. JOPLIN, INDIVIDUALLY AND AS ADMINISTRATOR OF THE SUCCESSION OF BENNET JOPLIN, PLAINTIFF IN ERROR,

versus

THEODORE C. CHACHERE, JOHN P. BOAGNI, AND VICTOR C. SITTING.

BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

Ferdinand M. Joplin, plaintiff in error, instituted a petitory action against defendants claiming to be owner of certain land in Acadia parish, Louisiana, described as section 41, T. 7 S. range 1 E, containing eight hundred and seventy and six hundredths acres of land, by purchase from James H. Houston, Jr., who purchased from the only surviving heir of Bennet Joplin, deceased. The deceased Bennet Joplin's private claim to said land was confirmed under act approved March 3rd, 1807, and predicated upon the treaty of the United States with France in the purchase of the Louisiana territory.

The plaintiff, by amendment of his petition, which was allowed, waived his individual claim to all but one tenth

of the land, and in the capacity of administrator of the succession of Bennet Joplin, sued for nine-tenths, for said succession, joining in the prayer to be recognized as owner of the other tenth.

On July 16th, 1900, the United States issued a patent confirming Bennet Joplin and his heirs' title to said land.

Joplin was a soldier in the War of the Revolution, and settled in Louisiana in 1806. He died many years before the issuance of said patent, and the assessment of said land by the State of Louisiana and the sale of said property for taxes in 1871.

The plaintiff in error bases his title on the patent. The defendant's title is based on a tax deed in 1871, from the tax collector, D. C. Sitting, to his son Victor C. Sitting, of St. Landry parish, of which the parish of Acadia was then a part, and the confirmation of the tax deed by the Auditor in 1874, and prescription. The questions presented are:

1st. Was there a divestiture of the title of the United States to said land prior to the issuance of the patent in 1900, so as to confer absolute ownership of the same in Joplin and his heirs, subjecting it to sale by the State.

2nd. Was the tax sale in 1871 an absolute nullity so that prescription could not be successfully pleaded as a defence?

1. It is conceded, private land claims based on title derived from the treaty with France in the purchase of Louisiana which had not ripened into complete grants before the cession of the territory of Louisiana, were segregated from the public domain and entered into private ownership, when the grant was confirmed by the Board of Commissioners, and confirmed by Act of Congress and identified by survey and approved by the Surveyor General. In such case the patent adds nothing to the title, and its issuance is a mere ministerial act.

Whitney vs. Morrow, 112 U. S. 693.

But in such a case the legislative confirmation must be by specific boundaries, distinguishing and separating it from other tracts and be capable of identification.

Whitney vs. Morrow, 112 U. S. 693.

The certificate issued by the Board of Commissioners described the land as located in the county of Opelousas, water course Mallet's Woods, acres 913.98. Arpents and hundredths in front 10.80. It was located on a water course on both sides of Bayou Mallet, and there is no such designation of it as to locate it at any particular part of the bayou, separating it from other lands on said bayou. No patent could have been issued under such a description. It was therefore necessary for a survey to be made and the land specifically described, and approved by the Surveyor General. It appears from the evidence that there was a survey made in 1856 by a deputy surveyor. This survey was not approved by the Surveyor General until Nineteen hundred. A letter from the Commissioner of the General Land Office to E. L. Wells, dated Friday, 17th, 1900, in answer to his inquiry why a patent had not been issued to Bennet Joplin, says:

> "I have the honor to advise you that it does not appear that the claim above described has ever been patented. I have further to advise you that the township plats show that the claim is in partial conflict with two other private claims, and it does not appear that the conflict has ever been adjudicated. Before patent will issue for a claim in conflict with others, it is necessary that the register and receiver adjudicate the conflict in accordance with the law. The claims are within the New Orleans District, and for informatoin as to the manner of adjudicating conflicts, you are referred to the Register and Receiver of that place."

Surveyor General James Lewis, in a letter to Mr. Wells, dated March 29, 1900, says:

> "I am in receipt of your letter of the 28th, inst., and in reply thereto will state that the case is now being investigated and as soon as the Honorable Register and Receiver render their decision in the matter of the Bennet Joplin private land claim, you will be promptly notified.
>
> "In this connection will state that such cases are often complicated and require time to make decisions. You may rest assured that this office has no intention to delay the matter or to evade answering your letters."

The conflict to be adjudicated was between the Joplin claim and the claim of John B. Staley and William Johnson, respectively, O. B. B. 1910, and O. B. B. 99. The adjudication of the Register and Receiver is in the record, and was offered in evidence by plaintiff in the trial court, and on objection by defendants, was ruled out. A bill was reserved to the ruling of the trial judge, and brought to the attention of the appellate court, but no ruling was made thereon. If offered to prove the fact of a conflict of the Joplin claim and the others mentioned, we are of the opinion that it ought to be received. This fact, however, is shown in the reasons given for the issuance of the patent, and it is further shown that it was not until the 9th day of May, 1900, that the survey of Deputy Phelps, of said land, was approved by the Surveyor General. The legal title to the Joplin claim was in the United States until patent issued in 1900, and the defendants can not avail themselves of the plea of prescription. The confirmatien to Joplin by Act of Congress was only as to quantity, and not to any specifically described tract of land. There was only an equitable interest in Joplin and his heirs until a survey should be made and approved by the Surveyor General,

segregating his part from the public domain, and from conflicting claims. The survey of 1856 was not approved until May 9th, 1900, when the Receiver and Register approved said survey, giving to Joplin and to conflicting claimants the tracts to which they were entitled under the confirmation. It was only then that the complete legal title was vested in Joplin and his heirs to the tract of land in controversy. It was only from this time that prescription commences.

Langdeau vs. Hanes, 21 Wallace 521.
Morrow vs. Whitney, 95 U. S. 551.

From the letter of the Commissioner to E. L. Wells, referred to, it will be observed that where there were conflicting claims, it was incumbent upon the Register and Receiver to adjudicate the same. It was not until this adjudication that any designated and specific tract of land was awarded or adjudicated to Joplin and his heirs. How then, could the assessor of the parish of St. Landry usurp the jurisdiction conferred by law upon the Register and Receiver and make an award to Joplin of a specific tract of land, settling the conflicting claims between him and others?

2nd. Tax title of defendants.

In the opinion of the Supreme Court of the State of Louisiana, it is stated that a tax deed can not be attacked collaterally. This is true as to any title or any deed. But there is a direct attack on the title of defendant in a petitory action. The plaintiff is not required to set out defendants' title and attack it. He attacks the title of defendant in his allegation of perfect and complete ownership, and the defendant is required to set out his title in defense. If, on its face, it is defective, and the cure of such defects can be supplied as in the case of tax titles by proof *aliunde,*

it is incumbent upon the defendant to show that the essentials for a tax title, the omission of which in the tax deed constitutes the defects, were really done and performed.

The tax deed from D. C. Sitting, Tax Collector, to Victor C. Sitting, recites that on the 30th day of December, 1871, he sold to said Sitting the Joplin land for State and Parish taxes due in 1871, for the price of Seventy-two dollars. The confirmation of the tax deed by the Auditor of Public Accounts on May 9th, 1874, recites that the land was sold "as per assessment roll of the State of Louisiana of the year 1870, to satisfy a debt due said State for the unpaid taxes of the year 1870."

By referring to Act 68 of the Extra Session of 1870, under which this assessment was made, it will be seen that taxes were assessed one year, and for that year when delinquent were sold the succeeding year commencing the 1st day of February. Sec. 56 of the Act, p. 140. Property, therefore, could not be assessed and sold in the same year, in which it was assessed. For this reason the tax deed is an absolute nullity.

Redfield vs. Parks, 132 U. S. 239.

The tax deed does not contain any recitals of the essentials of a tax sale under the Act 68 of the Extra Session of 1870. It failed to recite that notice had been served on the tax payer as required by Section 56 of the Act. The tax deed does not recite that the land of Joplin was sold in a judicial proceeding to enforce the payment of the taxes assessed.

Sec. 58 of the Act is as follows:

> "That in case of refusal or neglect of property owners to pay their taxes, the tax collector shall, after twenty days' written notice, in any city or corporate town, and thirty days' in any parish to the owner of the property assessed, his agent or attorney in fact,

> proceed according to law to obtain judgment, and to have seized and sold any property, real or personal rights or credits belonging to such defaulting tax payer, and all costs of such seizure and sale shall be borne by the party cast in the suit."

Under this act, as well as that of 42, of 1871, notice to the tax payer, and all essentials of a tax sale were required before there could be a valid sale of the property of the tax debtor. These essentials were required to be recited in the tax deed. The only recital as to the compliance with Act 68, of 1870, is that, "Know all men by these Presents, that by virtue of the power vested in me by law and strictly in accordance with all the legal proceedings in such cases, made and provided," etc. This was not a compliance with the law. The tax sale was therefore null and void on the face of the deed.

Rap vs. Lowry, 30th La. Annual 1272.
Lambert vs. Craig, 45th La. Annual 1110.

Chief Justice Marshall, in Thacher vs. Pervell, 6 Wheat. 119, said:

> "That no public officer can sell and convey a good title to the land of an other unless authorized to do so by express law, is one of those self-evident propositions to which the mind assents without hesitation; and that the person intrusted wth such power must pursue with precision the course prescribed by law, is a principle which has been repeatedly recognized by this Court."

The Tax Collector of St. Landry parish had no power to seize and sell without the intervention of judicial process, the property of Joplin, as the Act 68 Sec. 58, referred to requires the Tax Collector, after giving written notice of twenty days, to "proceed according to law to obtain judgment." The Tax Collector did not proceed to sell, or sell

under any judicial proceeding. There was no judgment obtained against the defaulting tax debtor, and he made a direct seizure ignoring the provisions of Sec. 58.

Bennet Joplin was a soldier during the War of the Revolution. He came to Louisiana in 1806, and died many years before the assessment of the property in his name. He was notoriously dead. Testimony of his grandson, Ferdinand Joplin, record, p. 39. The tax sale was therefore an absolute nullity. The assessment was not in the name of the owner as required by said Act of 1870.

Stafford, Ex., vs. Twitchell, 33rd La. Annual 520.

"It has been held that where the statute makes the deed prima facie evidence, that the requirements of the sale have been complied with, it does not disprove the purchaser from proof that the statutory conditions precedent have been complied with.

Robson vs. Osborn, 13th Texas 298.

Cooley on Taxation, 355.

So, where the statute made the deed *prima facie* evidence of the regularity of the sale. So, where the statute made the deed evidence of title in *fee simple.*

> "It is only where the statute makes the deed *prima facie* evidence, not only of the regularity of the sale, but of all prior proceedings and of the title of the purchaser, that it has been given effect to change wholly the burden of proof."
>
> *Stafford, Ex., vs. Twitchell,* 33rd La. Annual, p. 527

Sec. 59, of Act 68, of 1870, provides:

> "That tax collectors shall be and they are hereby authorized to give a title in the name of the State of Louisiana, to all persons purchasing property sold in pursuance of this Act, and such title shall be held and recognized by all Courts in this State as valid in law."

Under this section, a strict pursuance of the Act must be pursued to make the title prima facie. It is evident that the tax sale by the tax collector, was not made in pursuance of the act.

The Supreme Court of Louisiana, in the opinion of the Chief Justice, says:

> "Plaintiff is seeking to enforce a neglected and apparently an abandoned right. He could not proceed to enforce his right on the property until he obtained a legal title to it, which was the patent from the government. And this could not be issued until after the adjudication of the Register and Receiver heretofore referred to. The adjudication was made on 9th May, 1900, and the patent issued by the President 16th day of July, 1900. This suit was filed September 15th, 1900. This suit could only be maintained in the Federal Courts on the presentation of the legal title."
>
> *Gibson vs. Chouteau*, 13th Wallace 92.
> *Redfield vs. Parks*, 132 U. S. 239.

The defendants are not entitled to recover for taxes paid. The property was not properly on the assessment rolls, and could not be placed thereon until a patent issued to the plaintiff. The equitable interest of the plaintiff was not assessed, but the assessment was directly of the property. The costs of improvements are compensated by the defendants' use of the property, the crops raised and timbers cut.

S. D. McENERY,
Attorney for Plaintiff in Error.

GEO. S. DODDS,
MARK M. BOATNER,
of Counsel.

OPINION

Supreme Court of the United States.

No. 96.—October Term, 1903.

Ferdinand M. Joplin, Individually and as Administrator of the Succession of Bennet Joplin, Plaintiff in Error,
vs.
Theodore C. Chachere, John P. Boagni and Victor C. Sittig.

In error to the Supreme Court of the State of Louisiana.

[January 4, 1904.]

This action was brought in the Eighteenth Judicial District Court, parish of Acadia, State of Louisiana, by plaintiff in error to have himself declared the owner of a tract of land containing 870.06 acres, described as section 41, township 7 south, range 1 east. Subsequently he amended his petition and claimed one-tenth individually and nine-tenths as administrator of the succession of Bennet Joplin. He traced title in both capacities to Bennet Joplin, to whom the land was confirmed by the act of Congress, approved March 3, 1807, entitled "An act respecting claims of land in the Territory of Orleans and Louisiana." (2 Stat. 440.) This act was an amendment to the act of March 2, 1802, (2 Stat. 324,) which provided for ascertaining and adjusting the titles and claims to land within the same territory. The purpose of both acts was to recognize and establish the titles possessed by the inhabitants of that territory prior to its acquisition by the United States.

Section 4 of the act of 1807 provided:

"That the commissioners appointed or to be appointed for the purpose of ascertaining the rights of persons claiming lands in the Territories of Orleans and Louisiana shall have full powers to decide according to the laws and established usages and customs of the French and Spanish governments, upon all claims to lands within their respective districts, where the claim is made by any person or persons, or the legal representative of any person or persons who were on the 20th day of December, one thousand eight hundred and three, inhabitants of Louisiana, and for a tract not exceeding the quantity of acres contained in a league square, and which does not include either a lead mine or salt spring, which decision of the commissioners, when in favor of the claimant, shall be final against the United States, any act of Congress to the contrary notwithstanding."

A patent was issued July 16, 1900, in favor of Bennet Joplin, heirs and assigns. Stating the recitals of the patent and some other facts, the Supreme Court of Louisiana said:

"That it [the patent] was granted in accordance with the provisions of the act of Congress of the third of March, one thousand eight hundred and seven. It declares that there had been deposited in the General Land Office of the United States a patent certificate numbered fourteen hundred and ninety-nine, issued by the register and receiver of the United States Land Office, on the 25th of May, one thousand nine hundred, whereby it appeared that the private claim of Bennet Joplin, being numbered one thousand nine hundred and twenty-seven, class B, in the report of the old board of commissioners for the western district of the Territory of Orleans, was confirmed by the said commissioners under the authority conferred upon them by the act of Congress approved on the 3d of March, 1807, entitled 'An act respecting claims to land in the Territories of Orleans and Louisiana'; that the claim had been regularly surveyed and designated as section forty-nine in township seven, south of range one west, and section forty-one in township seven, south of range one east, of the Louisiana meridian, in the southwestern district of Louisiana, containing eight hundred and seventy acres and six hundreths of an acre, as appeared by a plat and descriptive notes on file (in the General Land Office) thereof, duly examined and approved by James Lewis, surveyor general for Louisiana, on the 9th day of May, one thousand nine hundred; that this plat and descriptive notes were inserted and made part of the patent.

"The plat and descriptive notes referred to were signed, as recited, by James Lewis, surveyor general of Louisiana, on the ninth of May, 1900.

"Immediately following the plat the surveyor general recites that it represents the survey of the private land claim of Bennet Joplin, confirmed by the old board of commissioners for the western district of Louisiana, in pursuance of the authority conferred upon them by the fourth section of the act of Congress approved March 3, 1807, entitled 'An act respecting claims to lands in the Territories of Orleans and Louisiana,' as appeared by their confirmation certificate No. B, 1927, dated March 11, 1802. After making this recital, the surveyor general says: 'The following being a description of the survey taken from the approved field notes of N. B. Phelps, deputy surveyor.' He then gives the field notes of the survey.

"At the end of the document, under date of May 9, 1900, are the words 'examined and approved,' followed by the signature of the surveyor general."

The defendants Chachere and Boagni depended for title upon purchases from Victor C. Sittig, by authentic acts duly recorded. Sittig purchased the same at tax sale in 1871. The defendants pleaded that Sittig and themselves had the uninterrupted, peaceable and actual possession of the land in good faith since 1871; had erected improvements thereon and paid taxes. They also pleaded the prescription of three, four, five, ten and twenty years. Victor Sittig was called in warranty and made the same defenses.

The District Court decreed that the claim of plaintiff be rejected, the plea of prescription set up by defendants be sustained, and they be quieted in their title and possession of the land. The Supreme Court of the State affirmed the decree, and the case was then brought here. Other facts are stated in the opinion.

Mr. Justice McKenna delivered the opinion of the Court.

The question presented is the effect of the defense of adverse possession and the plea of prescription. The contention of plaintiff in error is that such defense cannot avail against a United States patent. In other words, until the issue of the patent the title was in the United States and was unaffected by the occupation of the defendants.

Counsel say:

"The confirmation to Joplin by act of Congress was only as to quantity, and not to any specifically described tract of land. There was only an equitable interest in Joplin and his heirs until a survey should be made and approved by the surveyor general, segregating his part from the public domain, and from conflicting claims. The survey of 1856 was not approved until May 9, 1900, when the receiver and register approved said survey, giving to Joplin and to conflicting claimants the tracts to which they were entitled under the confirmation. It was only then that the complete legal title was vested in Joplin and his heirs to the tract of land in controversy. It was only from this time that prescription commences."

Is the contention of counsel justified? They cite *Langdeau* v. *Hanes*, (21 Wall. 521,) and *Morrow* v. *Whitney*, (95 U. S. 551.) To determine the application of those cases there are important facts to be considered. The Supreme Court of Louisiana said:

"We do not think there is any dispute between the parties as to the fact that, on the 12th of March, 1812, the board of commissioners appointed under section four of the act of Congress, approved March 3, 1807, confirmed to Bennet Joplin under certificate No. 1927, by virtue of occupancy and settlement under Joseph Chevalier Poiret, nine hundred and thirteen and ninety-eight hundredths acres of land in Bayou Mallet woods, in the county of Opelousas; that on April 29, 1816, Congress, reciting the various acts bearing upon the subject, (act of March 10, 1812, act of February 27, 1813, and act of April, 1814,) passed an act for the confirmation of certain land claims in the western district of the State of Louisiana, and that under section 4 of that act it was enacted 'that the claims marked "B," described in the reports of the commissioners for the western district of the State of Louisiana, formerly Territory of Orleans, and recommended by them for confirmation, be, and the same are hereby, confirmed;' that the claim of Bennet Joplin, covered by certificate No. 1927 of the board of commissioners, was confirmed in favor of Joplin by that act of Congress; that although the claim was so confirmed by act of Congress, no patent was issued for the land by the United States government until July, 1900."

In other words, the land claimed by Poiret was identified by his possession. It contained a definite quantity. Fractions of acres were even regarded, and almost necessarily. The right of a claimant depended upon possession, and naturally its extent was marked by definite boundaries. How else could a claim have any strength at all—any right to confirmation at all? The certificates issued by the commissioners were denomi-

nated grants, (sec. 7,) and they were required to designate a tract of land, (sec. 6.) Section 7, it is true, provided for a survey. The provision is "that the tracts of land thus granted by the commissioners shall be surveyed at the expense of the parties, under the direction of the surveyor general," in all cases where authenticated plats of the land, as surveyed by the French, Spanish and American governments, respectively, shall not have been filed with the proper register and recorder, or shall not appear on the public records of the territories. The surveying officer was required to transmit general and particular plats of land thus surveyed to the proper register and recorder and copies to the Secretary of the Treasury. The duties of the officers under the act may be summarized as follows: (1) The commissioners to investigate the claim, and if they confirmed it to issue a certificate thereof and transmit a transcript of their final decision to the Secretary of the Treasury. (2) The register and receiver, upon the filing of the certificate with him and a plat of the land being also filed with him by the surveyor general or officer acting as surveyor general, should issue a certificate, which, being transmitted to the Secretary of the Treasury, would entitle the party to a patent. (3) The survey of the land by the surveyor general or officer acting as such. (4) Reports by the Secretary of the Treasury to Congress "for their final determination hereon, in the manner and at the time heretofore prescribed by law for that purpose." There is no evidence that the register and receiver issued a certificate other than that mentioned in the patent. The commissioners performed the duties required of them and the Secretary of the Treasury performed his. And a survey was made of the land in 1856.

Under these facts did the title pass by the confirmation expressed in the act of Congress of April 29, 1816, (3 Stat. 328,) or, at the latest, upon the survey in 1856, or did it pass by the patent in July, 1900? For answer we may refer to the cases cited by the plaintiff in error.

In *Langdeau* v. *Hanes*, the contest was between a title claimed by virtue of the act of Congress, March 26, 1804, which confirmed claims to lands in the district of Vincennes, and a title claimed by adverse possession. It was provided by the act of Congress that a person to whom land is confirmed, whenever his claim shall have been located and surveyed, shall be entitled to the certificate from the register and receiver, which certificate shall entitle him to a patent. The tract in dispute was surveyed in 1820, but a patent was not issued until 1872. The defendant's claim of title rested on an adverse possession of thirty years. The State court held that the act of confirmation of 1807 was a present grant and became so far operative and complete as to convey the legal title when the land was located and surveyed by the United States in 1820; second, the patent was not of itself a grant of the land but only evidence of a grant; third, the adverse possession of the defendant was a bar to the recovery by the

plaintiff. Those propositions were affirmed by this court. The court held that the acts of Congress of 1804 was a recognition and discharge of the obligation, incurred by the government upon acquiring the territory from Virginia, to protect and confirm the possession and titles of the inhabitants to their property. And it was held that it was competent for Congress to provide how that it should be done, and Congress required a presentation of the claims to the register and receiver of the land office, constituted them commissioners to pass upon the claims "according to justice and equity," and to transmit to the Secretary of the Treasury a transcript of their decisions with his report. The Secretary of the Treasury submitted the decisions and the report to Congress, as he has required to do, and Congress passed the act of 1807 to confirm them. The court said:

"This confirmation was the fulfillment of the condition stipulated in the deed of cession so far as the claimants were concerned. It was an authoritative recognition by record of the ancient possession and title of their ancestor, and gave to them such assurance of the validity of that possession and title as would be always respected by the courts of the country. The subsequent clause of the act providing for the issue of a patent to the claimants, when their claim was located and surveyed, took nothing from the force of the confirmation.

"In the legislation of Congress a patent has a double operation. It is a conveyance by the government when the government has any interest to convey, but where it is issued upon the confirmation of a claim of a previously existing title it is documentary evidence, having the dignity of a record, of the existence of that title, or of such equities respecting the claim as justify its recognition and confirmation. The instrument is not the less efficacious as evidence of previously existing rights because it also embodies words of release or transfer from the government.

"In the present case the patent would have been of great value to the claimants as record evidence of the ancient possession and title of their ancestor and of the recognition and confirmation by the United States, and would have obviated in any controversies at law respecting the land the necessity of other proof, and would thus have been to them an instrument of quiet and security. But it would have added nothing to the force of confirmation. The survey required for the patent was only to secure certainty of description in the instrument, and to inform the government of the quantity reserved to private parties from the domain ceded by Virginia.

"The whole error of the plaintiff arises from his theory that the fee to the land in controversy passed to the United States by the cession from Virginia, and that a patent was essential to its transfer to the claimants, whereas, with respect to the lands covered by the possessions of the inhabitants and settlers mentioned in the deed of cession, the fee never passed to the United States, and if it had passed, and a mere equitable title had remained in the claimants after the cession, the confirmation by the act of 1807 would have operated as a release to them of the interest of the United States. A legislative confirmation of a claim to land is a recognition of the validity of such claim, and operates as effectually as a grant or quit-claim from the government."

This doctrine was repeated in *Whitney* v. *Morrow*, (95 U. S. 551.) The question arose upon the ruling of the trial court refusing to admit a patent of the United States in evidence. Sustaining the ruling, this court said:

"In this case, the patent would have been of great value to the claimant. It would have enabled him, without other proof, to maintain his title in the tribunals of the country. Founded as it would have been upon a survey by the government, it would have removed the doubt as to the boundaries of the tract, which always arises where their establishment rests in the uncertain recollection of witnesses as to ancient possession. It would thus have proved to its possessor an instrument of quiet and security, but it would not have added anything to the interest vested by the confirmation. (*Ryan et al.* v. *Carter et al.*, 93 U. S. 78.)"

These cases are not in conflict with *Gibson* v. *Chouteau*, (13 Wall. 93,) as was observed in *Langdeau* v. *Hanes*. The land in controversy had been part of the public lands of the United States. The title of Gibson was derived under the act of Congress of February 17, 1815, for the relief of the inhabitants of the county of New Madrid, in the Territory of Missouri, who had suffered by earthquakes. (3 Stat. 211.) James T. O'Carroll obtained permission from the Spanish authorities to settle on vacant lands in the district of New Madrid, in the Territory of Louisiana, and in pursuance of the permission he settled upon a tract embracing about 1,000 arpents of land, in that part of the country which afterwards comprised the county of New Madrid in the Territory of Missouri. The land settled upon, to the extent of 640 acres, was confirmed to O'Carroll by different acts of Congress. In 1812 the land was injured by an earthquake, and upon proof of the fact the recorder of land titles at St. Louis gave a certificate to that effect, which authorized the location of a like quantity on any of the public lands of the Territory of Missouri, a sale of which was authorized by law. Under this certificate the land in dispute was located. The land located had been previously surveyed, but for some cause the survey and plat were not returned to the recorder until August, 1841. The recorder then issued a patent certificate to "James T. O'Carroll or his legal representatives." The survey was not approved by the Commissioner of the General Land Office, because it did not show its interferences with conflicting claimants. A new survey and plat were made, showing interferences, and were filed with the recorder on the 26th of March, 1862, and a new patent certificate issued. In the following June the patent of the United States was issued to Mary McRee, who had acquired the interest of the locator by various mesne conveyances. In August following she conveyed to Gibson. Against the title thus acquired, among other defenses, adverse possession for the period prescribed by the statute of Missouri was pleaded. The plea was sustained. The judgment was reversed by this court.

It is obvious that there is a clear distinction between the case and *Langdeau* v. *Hanes* and *Whitney* v. *Morrow.* The act of 1815 did not confirm to O'Carroll the tract of land which he obtained from the Spanish authorities. It only enabled him or his representatives to locate a like quantity of the public land, and a segregation of that quantity and its exact identification were necessary, and this did not occur until the issue of the patent in 1862. The patent, therefore, was not the mere formal assurance of a title that had been conveyed by another government, but it was the conveyance of the title of this government after conditions performed, which authorized but did not anticipate it nor were they its equivalent. The case at bar, therefore, does not come under the precedent of *Gibson* v. *Chouteau;* it comes under that of *Langdeau* v. *Hanes* and *Whitney* v. *Morrow.*

Plaintiff in error claims under Joplin, who claimed under Poiret, who claimed under the French government. And it was the title to a tract of land thus claimed that the commissioners under the act of 1807 adjudicated and granted, and it was that title which was confirmed by the act of April 29, 1816.

What element then is wanting? Plaintiff in error says the identification of the land, its complete definition by boundaries, and until this was done the title was in the United States. We need not dispute the principle upon which the contention rests. We think its conditions were satisfied. Poiret's title was obtained by occupation and the right of his successor Joplin depended upon that, and by that the award of the commissioners could only have been measured. It is not conceivable that the boundaries of the tract were not ascertained by them. Their certificate, as was seen, expressed an exact quantity, 918.98 acres, and having a frontage of 1,080 arpents. The evidence before the commissioners is not exhibited, but there was a survey in 1856. The remarks of the Supreme Court of Louisiana are, therefore, apposite:

"It is evident that Poiret was shown to the board to have already occupied and settled a particular body—land for the time stated and to have already had an existing right or privilege to a particular tract. The identity of the tract confirmed must have been fixed by evidence before the board, and the survey which followed was unquestionably based upon that evidence, preserved and made known to the surveyor. The Joplin claim under Poiret was not based upon the survey, but the survey was based upon the existing claim, and simply identified the land to which Poiret and Joplin were entitled by antecedent occupancy and settlement."

Speaking of the survey, the court said:

"If, however, a survey of the claim was necessary in order to complete the transfer of ownership of this property to Joplin, we are satisfied that a survey of the same was made and approved by the surveyor general, W. J. McCulloh, as far back as 1856. The present surveyor general of Louisiana refers to the survey and field notes of Phelps as having been

approved, but not as a matter of original approval by himself, as the plaintiff seems to contend. In the act of sale of this land under which the plaintiff claims from James W. Joplin to James H. Houston, Jr., the land transferred is referred to as a 'Spanish grant' with the added words (see parish map and a list of private land claims, where the above described property is well defined as belonging to Bennet Joplin). We have before us a copy of the parish map here referred to, with the different private claims (among others that of Bennet Joplin) distinctly set out, and the surveys on which were located minutely detailed, certified to as far back as 1856 by the surveyor general. It may be that is not strictly and technically in evidence, but it is before us by reference in one of the acts, and were we not to act upon it the only effect would be to remand uselessly the case in order to have it formally introduced."

Bennet Joplin, it was testified, died before the assessment was made upon which the tax sale upon which the title of the defendants in error depended, and the validity of the assessment, therefore, is denied, because it was not made in the name of the owner, as required by the statute of the State of 1870. The assessment is also attacked for non-conformity with the statutes in other particulars. In passing on the questions thus raised the Supreme Court of Louisiana construed the statutes of the State differently from plaintiff in error, and answered all the questions on grounds not Federal, and which, therefore, we need not discuss.

Judgment affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.